TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 473

THE UNITED STATES OF AMERICA, PETITIONER

vs.

REGINALD P. WITTEK

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 21, 1948
CERTIORARI GRANTED MARCH 14, 1949

SUPREME COURT OF THE UNITED STATES

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THE UNITED STATES OF AMERICA, PETITIONER,

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INDEX

1 Municipal Court for the District of Columbia, Civil Division, Landlord and Tenant Branch, 500 Fourth Street N. W., First Floor, Washington, D. C.

No. L. & T. 120, 124

UNITED STATES OF AMERICA, PLAINTIFF

vs.

REGINALD P. WITTEK, 5 QUADRANT GREEN, S. W., DEFENDANT

Complaint for Possession of Real Estate

District of Columbia, ss:

Floyd L. France, acting under authority of the Attorney General and at the request of the Executive Officer of the National Capital Housing Authority being first duly sworn, states that plaintiff is entitled to the possession of premises No. 5 Quadrant Green, S. W., located in the District of Columbia, which the defendant holds without right. The premises are in possession of the defendant, who holds them as a month to month tenant of the plaintiff.

The ground or grounds upon which possession is sought are:

Defendant's default in the payment of rent, there being now due rent in the sum of $— for the period from

That possession is sought under Section 5 of the District of Columbia Emergency Rent Act by reason of the following: (Explain fully).

The tenancy has been terminated by notice to quit served upon the defendant as required by Title 45, section 902 of the District of Columbia Code.

Affiant also states: (Check one of the following)

That a notice to quit has been served upon the defendant as required by law;

That service of a notice to quit has been specifically waived in writing.

2 Affiant therefore says that plaintiff is entitled to judgment for possession of said property (and judgment in the sum of $— for rent in arrears) and costs of this suit.

(S) FLOYD F. FRANCE,
Plaintiff,
Attorney, Room 2138,
Department of Justice, Wash., D. C.

Subscribed and sworn to before me this 12th day of April, 1946.

(S) EMILY McC. IRELAND,
Notary Public, D. C.

In the Municipal Court of the District of Columbia

Motion to Dismiss for Failure to State a Cause of Action

Comes now the defendant by his attorney, Ward B. McCarthy, and moves to Dismiss the Complaint for possession of Real Estate filed herein, for failure to state a cause of action upon which possession may be granted by this Court. For grounds of this motion, defendant says:

1. The Complaint fails to state a ground for possession of housing accommodations within the meaning of Title 45, Section 1605, District of Columbia Code 1940.

2. For such other grounds as may be presented to the Court at the time of the hearing of this motion.

(S) WARD B. McCARTHY,
Attorney for Defendant,
1005 Investment Building,
Washington, D. C.

3 In the Municipal Court of the District of Columbia

Order Dismissing Complaint—April 29, 1946

Comes now the defendants and, by their attorney of record, in open Court move that cases #120,124; 120,126; 121,041 be consolidated for trial, said oral motion being hereby granted.

Further, the defendants by their attorney of record moves the Court to Dismiss the Complaint for possession of Real Estate for failure to state a cause of action upon which possession may be granted, the same being hereby granted.

4 The Municipal Court of Appeals for the District of Columbia

No. 411

UNITED STATES OF AMERICA, APPELLANT,

v.

REGINALD P. WITTEK, APPELLEE

No. 412

UNITED STATES OF AMERICA, APPELLANT,

v.

MYRON G. PURSEL, APPELLEE

No. 413

UNITED STATES OF AMERICA, APPELLANT,

v.

FRANCIS C. WRIGHT, APPELLEE

No. 414

UNITED STATES OF AMERICA, APPELLANT,

v.

EUGENE R. ISNER, APPELLEE

No. 415

UNITED STATES OF AMERICA, APPELLANT,

v.

JAMES E. SKELTON, APPELLEE

Appeals from the Municipal Court for the District of Columbia, Civil Division

Opinion—September 12, 1946

Argued August 19, 1946

Floyd L. France, for appellant.
Ward B. McCarthy, for appellees.

Before Cayton, Chief Judge, and Hood and Clagett, Associate Judges.

CLAGETT, *Associate judge:*

5 The principal question urged on these appeals is whether the District of Columbia Emergency Rent Act [1] applies to housing accommodations in the District of Columbia owned

[1] Code 1940, 45-1601 et seq.

by the United States and administered by the National Capital Housing Authority. A secondary procedural question relates to the form of the complaints.

Each of the five suits was filed in the name of the United States of America in the Landlord and Tenant Branch of the Municipal Court. Each was against a separate defendant and was brought to recover possession of separate premises described by street addresses in the southwestern section of the city. In each case the verification required by the rules of the trial court was executed by an attorney "acting under authority of the Attorney General and at the request of the Executive Officer of the National Housing Authority." The form of complaint required by Landlord and Tenant Rule 13 of the trial court specifies that the ground or grounds upon which possession is sought shall be stated and for convenience sets up two general possible grounds, first, the non-payment of rent and, second, the various grounds contained under Section 5(b) of the Rent Act. In these complaints the portion of the form relating to the Rent Act was x'd out, and there was inserted the following: "The tenancy has been terminated by notice to quit served upon the defendant as required by Title 45, section 902, of the District of Columbia Code."[2] This was all the information contained in the complaints.

Each of the defendants filed a motion to dismiss upon the sole ground that the District of Columbia Emergency Rent Act covers all housing in the District of Columbia, including housing owned by the United States, and consequently that the complaints failed to state a cause of action because they did not allege any of the grounds for possession specified in Section 5(b) of the Rent Act.[3]

Plaintiff contended that housing accommodations in the
6 District of Columbia owned by the United States and administered by the National Capital Housing Authority are not subject to the provisions of the local Rent Act. The trial court held the property was subject to the local Act and dismissed the complaints. From the orders of dismissal the United States appeals.

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[2] Under this section a tenancy from month to month, such as these tenancies are alleged to be, may be terminated by thirty days' notice in writing from the landlord to the tenant to quit, to expire on the day of the month from which such tenancy commenced.

[3] Section 5(b) provides that "no action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant, notwithstanding that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled," unless one of certain enumerated facts exists. Included in such facts are that the tenant

Aside from the merits of the case, we believe that the motions to dismiss should have been overruled under the familiar rule that a complaint is not subject to dismissal for failure to state a cause of action unless it appears certain that the plaintiff would not be entitled to relief under any state of facts which could be proved in support of its claim.[4]

All the allegations of the complaints have been stated above. They do not show whether the premises were commercial or housing accommodations. If they were commercial premises, which admittedly are not subject to the Rent Act, the complaints stated a cause of action.

The tenants urge that the form of complaint specified in the Landlord and Tenant Rules of the trial court was not followed literally in that the complaints did not show the premises were exempt from the local Rent Act. Such exactness of pleadings, however, is not required, particularly in Landlord and Tenant Court where informality of pleadings has always been the rule. *De Bobula* v. *Coppedge*, D. C. Mun. App., 40 A. 2d 255, 73 W.L.R. 7. Moreover, L. & T. Rule 4(c), which is applicable here, provides that "all pleadings shall be so construed as to do substantial justice."

Furthermore, even if these premises are housing accommodations and even if they are governed by the District of Columbia Emergency Rent Act, it is still possible that the United States could have stated a cause of action by alleging, for example, that the tenants had violated a condition of their tenancy. Under such circumstances, if the complaint does not state a case quite plainly enough but it appears that the plaintiff has a cause of action, the proper procedure is to grant the motion to dismiss with leave to amend. It is true that the record here does not show that plaintiff requested leave to amend, and we can not assume that the trial court would have denied such right had it been sought.[5] However, even
7 when appellate courts have held that a complaint stated a cause of action and have reversed trial courts for contrary decisions, the appellate courts have sometimes suggested that leave to amend be granted for the purpose of making the complaint more definite and certain.[6] The purpose of lawsuits should not be to

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has violated a condition of his tenancy, has committed a nuisance, or used the accommodations for an immoral or illegal purpose or for other than living or dwelling purposes.

[4] *Tahir Erk* v. *Glenn L. Martin Co.*, 4 Cir., 116 F. 2d 865; *Leimer* v. *State Mut. Life Assur. Co.*, 8 Cir., 108 F. 2d 302.

[5] *Johnson* v. *M. J. Uline Company, Inc.*, D. C. Mun. App., 40 A. 2d 260, 73 W. L. R. 18.

[6] *Louisiana Farmers' Protective Union* v. *Great A. & P. Tea Co.*, 8 Cir., 131 F. 2d 419; *Tahir Erk* v. *Glenn L. Martin Co.*, *supra*.

test technicalities of pleadings but to arrive at the just settlement of legal disputes.

In oral argument and briefs here on appeal, the parties have stated or assumed various facts regarding the tenancy of the defendants, the reason for the service of the notices to quit, and the statutes under which the premises in question were constructed and are now being operated.

For example, the Government states these premises are a part of "Bellevue Houses" and were erected by the Navy Department under the authority of the Second Supplemental National Defense Appropriation Act for 1941, 54 State. 872, 883. We are entitled to judicially notice the provisions of that Act, one of which is that houses built under its authority are to be rented only to Army and Navy Personnel, to field employees of Military and Naval establishments, etc. Obviously, whether these houses were so constructed has an important bearing on the case. Were they so constructed? The record is silent, and we know of no published document answering the inquiry.

Furthermore, both parties have argued the effect to be given to certain provision of the Lanham Act of 1940, 54 Stat. 1125, 42 U. S. C. A. §.1521 et seq., as amended January 21, 1942, 56 Stat. 11, but neither has mentioned Section 2 of the amendment, providing "That any proceedings for the recovery of possession of any property or project developed or constructed under this title shall be brought by the Administrator in the courts of the States having jurisdiction of such causes and the laws of the States shall be applicable thereto." Were these houses developed or constructed under this Act? Again the record is silent, and we know of no published document answering the inquiry.

Obviously the trial court took at least some of these facts into consideration in arriving at its decision, but none of them were properly before it on the motions to dismiss. The court may
8 judicially notice federal and local statutes, but not facts necessary to determine whether they are applicable.[7] No rule is more explicit or more generally approved than that on a motion to dismiss only facts alleged in the complaint, or which the court is entitled to judicially notice, may be considered.[8] The aptness of the rule is illustrated by the instant case. In our weighing of the various points raised by both parties on the merits, we have constantly been faced with the problem that we could not decide such points without taking into consideration alleged facts not in the record and which we are not entitled to judicially notice. We

[7] *Lasby* v. *Burgess*, 76 Mont. 452, 248 Pac. 190.

[8] *Cohen* v. *United States*, 8 Cir., 129 F. 2d 733.

have concluded, therefore, that the case must be returned to the trial court so that a proper record may be prepared, either by an amended complaint, by an answer, by a trial, or by two or more of those procedures.

Reversed and remanded for further proceedings in accordance with this opinion.

9 In the Municipal Court of the District of Columbia

Motion for Leave to File Amended Complaint for Possession of Real Estate

Now comes the United States of America, plaintiff in the above-entitled cause, and moves this court for leave to file an amended complaint, a copy of which is hereto attached.

The complaint has been amended by adding thereto paragraphs numbered II and III, and by adding to paragraph IV "February 28, 1946".

(S) FLOYD L. FRANCE,
Attorney for Plaintiff,
Room 2138,
Department of Justice,
Washington, D. C.

In the Municipal Court of the District of Columbia

Opposition to Motion for Leave to File Amended Complaint for Possession of Real Estate

The defendant opposes the granting of the motion upon the following grounds:

1. The proposed amended complaint is contrary to the form of action prescribed by L & T Rule 13.

2. The last paragraph of Paragraph III should be stricken as being a conclusion of law.

3. The proposed amended complaint for recovery of defense housing shows on its face from the facts alleged and the Acts of Congress and the Executive Order cited, that the proposed amended complaint should be brought either in the name of the National Housing Administrator or his managing agent, the Executive Officer of the National Capital Housing Authority.

4. Such other grounds as will be called to the attention of the Court at the time of the hearing of this motion.

(S) WARD B. MCCARTHY,
Attorney for Defendant,
Investment Building,
Washington, D. C.

10 In the Municipal Court of the District of Columbia

Amended Complaint for Possession of Real Estate

District of Columbia, ss:

I

Floyd L. France, acting under authority of the Attorney General and at the request of the Executive Officer of the National Capital Housing Authority, being first duly sworn, states that plaintiff is entitled to the possession of premises No. 5, Quadrant Green, S. W., located in the District of Columbia, which the defendant holds without right. The premises are in possession of the defendant, who holds them as a month to month tenant of the plaintiff.

II

The property as 5 Quadrant Green, S. W., is a housing unit in the defense housing project known as "Bellevue Houses" which is owned by the United States and was constructed by the Navy Department under authority of section 201 of the Second Supplemental National Defense Appropriation Act, 1941, approved September 9, 1940, 54 Stat. 872, 883. Under authority of section 201 of the Second Supplemental National Defense Appropriation Act, 1941, section 7 of the Lanham Act of October 14, 1940, 54 Stat. 1125, 42 U.S.C., sec. 1544, and Executive Order no. 9070, Fed. Reg. Vol. 7, p. 1529, the management and administration of the Bellevue Houses were transferred by the Navy Department to the National Housing Administrator. The authority of the National Housing Administrator to operate and manage the Bellevue Houses was by lease delegated to the National Capital Housing Authority in accordance with section 201 of the Second Supplemental National Defense Appropriation Act, 1941, the Lanham Act of October 14, 1940, 54 Stat. 1125, 52 U.S.C., sec. 1521, et seq., as amended by the Act of January 21, 1942, 56 Stat. 11 and section 5 of the Act of June 28, 1941, 55 Stat. 361.

11 III

The defendant entered into possession of 5 Quadrant Green, S. W., during August 1946, upon the payment of a monthly rental of $38.20. Thereafter, the rent was increased to $43.00 per month by administrative determination of the National Capital Housing Authority in accordance with section 201 of the Second Supplemental National Defense Appropriations Act, 1941, and section 7 of the Lanham Act of October 14, 1940, 54 Stat. 1125, 42 U.S.C., sec. 1544, as amended by the Act of January 21, 1942, 55 Stat. 361. The defendant was requested to execute a new lease requiring a rent of $43.00 per month and to pay rent at the rate of $43.00 per month,

beginning February 1, 1946. The defendant has refused and continues to refuse to execute a new lease and to pay rent at the rate of $43.00 per month. As a result, a thirty-day notice was served upon the defendant February 28, 1946, terminating his tenancy.

The plaintiff further alleges that the increase in rent was made in accordance with the authorities cited without reference to the provisions of the District of Columbia Emergency Rent Act of December 2, 1941, 55 Stat. 788, Title 45, D. C. Code, secs. 1601 and 1611.

IV

The ground upon which possession is sought is that the tenancy has been terminated by notice to quit served upon the defendant February 28, 1946, as required by Title 45, section 902, of the Code of the District of Columbia.

V

Affiant therefore says that plaintiff is entitled to judgment for possession of said property and costs of this suit.

(S) FLOYD L. FRANCE,
Attorney for Plaintiff,
Room 2168, Department of Justice,
Washington, D. C.

12 In the Municipal Court of the District of Columbia

Motion to Dismiss Amended Complaint for Possession of Housing Accommodations

Comes now the defendant, by his attorney, Ward B. McCarthy, and moves the Court to dismiss the Amended Complaint for Possession of Defense Housing Accommodations. For Grounds for this motion, he says:

1. The amended complaint is contrary to the form of action preseribed by L&T Rule 13.

2. The amended Complaint for the recovery of possession of "defense housing" shows on its fact from the facts aileged and the Acts of Congress and the Executive Order cited, that the action should be brought in the name of the National Housing Administrator or his managing agent, the Executive Officer of the National Capitol Housing Authority.

3. And such other and further grounds as may be called to the attention of the Court at the time of the hearing of this motion.

(S) WARD B. MCCARTHY,
Investment Building,
Washington, D. C.,
Attorney for Defendant.

In the Municipal Court of the District of Columbia

Judge Scott

Order Overruling Motion to Dismiss—October 17, 1946

Defendant's motion to dismiss amended complaint for possession of housing accommodations overruled.

Time within which to demand jury trial extended to October 31, 1946.

13 In the Municipal Court of the District of Columbia

Answer of Defendants

First Defense

The alleged plaintiff is not the proper party plaintiff and is not a landlord within the meaning of that term for the purposes of jurisdiction of this Court.

Second Defense

The proper party plaintiff is either the National Housing Administrator or his managing agent, the National Capital Housing Authority.

Third Defense

The complaints fail to state a cause of action for recovery of housing accommodations, maintainable in this Court.

Fourth Defense

The complaints fail to state a cause of action for recovery of housing accommodations, upon which this Court may give judgments for possession.

Fifth Defense

The form of complaint is contrary to the form of action prescribed by L. & T. Rule 13.

Sixth Defense

The complaint fails to state a claim against the defendants upon which relief can be granted.

Seventh Defense

The defendants deny they hold the premises as a month to month tenant of the plaintiff.

Eighth Defense

The defendants aver that the plaintiff does not in good faith seek to recover possession of said premises.

Ninth Defense

The defendants aver that the plaintiff is not entitled to said premises under the District of Columbia Emergency Rent Act or otherwise.

14 *Tenth Defense*

The defendants aver that there is no privity of landlord and tenant between them and the plaintiff herein.

Eleventh Defense

The defendants aver that the actions herein are contrary to the express intent of the Congress in creating the Rent Act, is contrary to the purposes of the Act and is in evasion thereof.

Twelfth Defense

The defendants deny that a notice to quit has been served upon them as required by law.

Thirteenth Defense

The defendants deny that the increases in rent are in accordance with the statutes cited by plaintiff.

Fourteenth Defense

The defendants aver that they are persons intended to be protected in their tenancies by the provisions of the statutes cited by plaintiff in paragraphs II, III, and IV of the complaint.

Fifteenth Defense

The defendants deny that any lawful rent is due or unpaid or that they have refused to pay the lawful rent for the premises involved.

Sixteenth Defense

The defendants aver that they are tenants within the meaning of such term as defined in the D. C. Emergency Rent Act and entitled to the protection therein afforded tenants.

Seventeenth Defense

The defendants aver that their landlord is a landlord within the meaning of that term as defined in the D. C. Emergency Rent Act and is subject to all of the restrictions, prohibitions and other requirements of said act.

15 *Eighteenth Defense*

Answering the complaint:

1. The defendant- admit they are in possession of the premises as tenants from month to month, but deny that they are tenants of the plaintiff or that the plaintiff is entitled to possession of the premises or that they hold the premises without right.

As to the remainder of the allegations, they are without sufficient information or knowledge to either admit or deny, and therefore demand strict proof thereof.

2. The defendants admit the properties in question are housing units in a defense housing project known as "Bellevue Houses".

As to the remainder of the allegations, they are without sufficient information or knowledge to either admit or deny and therefore demand strict proof thereof.

3. The defendant Wittek denies he entered — possession during August 1946 but says he entered into possession in August 1943 at a monthly rental of $38.00 per month. The other defendants admit that they entered into possession of the various premises on the dates and at the monthly rentals as alleged. However, the defendants Wittek, Pursel and Skelton aver that prior thereto they had entered into possession of other housing units of "Bellevue Houses" under written agreements with the Bureau of Yards and Docks, Navy Department.

The defendants admit that the National Capital Housing Authority increased the rentals as alleged, but say same was and is contrary to the terms of the District of Columbia Emergency Rent Act, was and is contrary to the purpose of said act, and was
16 and is in evasion thereof, and contrary to the provisions of the Emergency Price Control Act of 1942, as amended.

The defendants admit they were requested to execute new leases as alleged and that they refused to execute same. The defendants aver that they may not be compelled, under the Rent Act, to execute new leases, particularly where said leases attempt to change the obligations of their tenancies.

The defendants deny their tenancies have been terminated by a written notice as required by D. C. Code 1940, 45-902.

4. The defendant- deny their tenancies have been terminated by a written notice as required by D. C. Code 1940, 45-902.

5. The defendants deny that plaintiff is entitled to judgments for possession of said properties or the costs of this suit.

(S) WARD B. MCCARTHY,
Investment Building,
Washington, D. C.,
Attorney for Defendants.

In the Municipal Court of the District of Columbia

PRE-TRIAL PROCEEDINGS

Statement of Nature of Case:

Cases No. L&T 120, 124, 125, 126, 127, 121, 041 and 142, 195 have been consolidated for trial. They are all L&T actions to recover possession of the property in question upon notice to quit.

The Plaintiffs do not rely upon the Emergency Rent Control Act nor have they averred any ground set forth therein.

The Defendants contend that this Court is without jurisdiction to entertain the action by reason of the Emergency Rent Control Act.

Stipulations: By agreement of counsel for the respective parties, present in Court, it is ordered that the subsequent course of this action shall be governed by the following stipulations unless modified by the Court to prevent manifest injustice:

17 It is stipulated by and between the respective parties to these actions as follows:

1. That these actions are grounded upon notice to quit;

2. That the premises in question are housing accommodations in the District of Columbia;

3. That no breach of covenant is involved except in case No. 142,195;

4. That these houses were constructed by the Navy Dept. under authority of Sec. 201 of the 2nd Suppl. National Defense Appropriation Act, 1941, approved Sept. 9, 1940, 54 Stat. 872, 883 and that they were not constructed under the provisions of the Lanham Act, 1940;

5. That in 1941 the United States of America took title to the premises in controversy in these cases;

6. It is stipulated that the notices, dated February 25, 1946, and the notice dated June 26, 1946, from —. —. Adams to the respective

defendants may be received in evidence without formal proof. It is further stipulated that they were received personally by the defendants and counsel will endeavor to agree upon the date of service before trial.

7. It is stipulated between the parties to these actions that the photostat copy of lease between the United States of America and the National Capital Housing Authority, dated July 1, 1944, and amendment to lease between the United States of America and the Nat. Capital Housing Authority, dated March 30, 1945, may be received in evidence without formal proof.

8. That the Plaintiff stipulates in its case in chief no evidence will be offered relating to the increase in rent or proposed new lease mentioned in par. 3 of the Complaint.

Stipulation

It is hereby stipulated by and between the parties in the above entitled causes or action which have been consolidated for trial that these causes may be finally disposed of upon the amended
18 complaints, answers, interrogatories to the plaintiff, and the answers, pre-trial stipulation, and the following exhibits:

For the Plaintiff:

Plaintiff's Exhibits 1, 2, 3, 4, 5, 6, being the notices served upon the defendants, including the stipulations endorsed thereon.

Plaintiff's Exhibit No. 7, being a certified copy of a letter dated February 14, 1945, of R. Moreell, Chief of the Bureau of Yards and Docks, Navy Department.

Plaintiff's Exhibit No. 8, being a certified copy of a letter dated March 9, 1945, of John B. Blandford, Jr., National Housing Administrator.

Plaintiff's Exhibit No. 9, being an indenture of lease between the United States of America, acting through the Federal Public Housing Authority, and the National Capital Housing Authority, dated July 1, 1944.

Plaintiff's Exhibit No. 10, being an amendment to indenture of lease between the United States of America, acting through the National Capital Housing Authority, dated March 30, 1945.

Plaintiff's Exhibit No. 11, being a certified copy of a letter dated October 14, 1944, of John B. Blandford, Jr., National Housing Administrator.

Plaintiff's Exhibit No. 12, being a certified copy of a letter dated March 21, 1942, of John B. Blandford, Jr., National Housing Administrator, together with the inclosure consisting of National Housing Agency General Order No. 1.

For the Defendants:

Defendants' Exhibit No. 1. A letter dated December 7, 1945, from John Ihlder, Executive Officer, National Capital Housing Authority, to the Honorable Jennings Randolph, Committee on the District of Columbia, House of Representatives, transmitting, an inclosure entitle-, "National Capital Housing Authority—Report to members of Congress on reasons for increase in charge per month for gas for space heating at Bellevue Houses, dated December 6, 1945.

19 Defendants' Exhibit No. 2. A letter of John Ihlder, Executive Officer, dated December 11, 1945, addressed to Oliver C. Winston, Federal Public Housing Authority, with an inclosure.

Defendants' Exhibit No. 3. Letter from John Ihlder, Executive Officer of the National Capital Housing Authority, dated January 30, 1946, addressed to Honorable John L. McMillan, Chairman, Committee on the District of Columbia, House of Representatives, transmitting as an inclusive a document entitled "National Capital Housing Authority, Supplementary Report to Members of Congress on reasons for increase in charge per month for gas for space heating at Bellevue Houses, dated January 30, 1946.

Defendants' Exhibit No. 4, House of Representatives Report No. 1457, on H. R. 6128, which became Public Law 409 of the 77th Congress, approved January 21, 1942.

Defendants' Exhibit No. 5. Senate Report 918 on House Bill 6128, which became Public Law 409 of the 77th Congress, approved January 21, 1942.

The defendant- ask for special findings in their favor upon the following grounds:

1. Exclusive jurisdiction of all actions or suits of a civil nature at common law or in equity in which the United States of America shall be plaintiffs or complainants, is vested in the United States District Court for the District of Columbia under D. C. Code 1940, Title II, Section 306..

2. For the purpose of jurisdiction of this Court, under the pleadings and evidence, the United States of America is not the "landlord" within the meaning of that term.

3. The form of complaints *are* contrary to the Landlord and Tenant form of complaint prescribed by Landlord and Tenant Rule 13.

4. This Court has no jurisdiction to maintain these actions, the 30-days' written notice to quit being invalid because the authority of the signing agent to bind the plaintiff is not apparent on the face of the notice.

20 The defendants do not deny that W. W. Adams, who signed the notices to quit, Plaintiff's Exhibits 1 to 6, inclusive, was

an employee of the National Capital Housing Authority, nor do they question that Adams was instructed by his superior officers of the National Capital Housing Authority to give such notices, but reserve all other rights to object on the grounds stated above.

5. This Court has no jurisdiction to maintain these actions, the alleged 30-days' notice in writing on its face shows that Adams, the Project Manager, was giving notice on behalf of the National Capital Housing Authority, and not as agent for the alleged plaintiff.

6. This Court has no jurisdiction to maintain these actions, because the authority of the agent signing the 30-day written notice to quit, to bind the plaintiff has not been established.

7. This Court is without jurisdiction to either maintain these actions or grant judgment for possession of these properties because the plaintiff has alleged and proved:

(1) That a relationship of landlord and tenant from month to month exists for housing accommodations in the District of Columbia within the meaning of those terms in D. C. Code, 1940, Title 45-1611.

(2) That the tenants are not in arrears of rent, and are not violating any obligations of their tenancies.

(3) That the plaintiff has neither alleged nor proved any of the grounds for the recovery of possession of housing accommodations prescribed by D. C. Code, 1940, Title 45-1605.

8. The Court is without jurisdiction to either maintain these actions or to grant judgment for the recovery of the possession of these premises, because these properties are "Defense Housing" and acts of Congress, and Executive Order 9070 require all actions for the recovery of Defense Housing to be brought by the National Housing Agency, or its component branches in a court in this city having jurisdiction under the generally applicable laws for the recovery of housing accommodations. Therefore, the D. C. Code, 1940, Title 45-1605 requires that they be dismissed on the allegations of proof offered in support thereof.

21 ✓ It is further stipulated by and between the parties that the non-payment of rent by the defendant in Case No. 142, 195 shall not be considered at this time, but that the rights of the parties to have the non-payment of rent considered by the Court are not waived.

It is hereby further stipulated by and between counsel for the respective parties that the foregoing stipulation and exhibits constitute the facts involved in the instant case, and request is hereby

made of the Presiding Judge to consider this stipulation, together with the applicable law, as the basis for a final decision in this case.

Signed, this sixth day of December, A. D., 1946.

(S) FLOYD L. FRANCE,
For the Plaintiff;
(S) WARD B. MCCARTHY,
For the Defendants.

Plaintiff's Exhibit No. 3

National Capital Housing Authority
Washington, D. C.

February 25, 1946.

Mr. Reginald P. Wittek
5 Quadrant Green, S. W.
Washington, D. C.

DEAR MR. WITTEK:

Notice is hereby given you of the termination of your tenancy of 5 Quadrant Green, S. W. in the Bellevue Housing Project on Monday, the first day of April, 1946.

Accordingly, this thirty day notice is served upon you in accordance with law for the termination of your rent agreement with the Government and you are notified to quit the premises
22 on or before the 1st of April, 1946.

Very truly yours,

W. W. ADAMS,
Property Manager.

Plaintiff's Exhibit No. 7

In reply address Bureau of Yards and Docks and refer to No. ND17/N4-1 F4-3/jrt.

NAVY DEPARTMENT
Bureau of Yards and Docks
Washington, D. C.

February 14, 1945.

Mr. Philip M. Klutznick, Commissioner
Federal Public Housing Authority
Longfellow Building, Room 1115
Connecticut Avenue and M Street, N. W.
Washington, D. C.

MY DEAR MR. COMMISSIONER:

Pursuant to Presidential Executive Order No. 9070 of 24 February 1942 and the National Housing Agency Administrator's letter

of 21 March 1942, jurisdiction of the low-cost housing project no. DC-49011 consisting of 600 units at Bellevue, Washington, D. C., was transferred to Schedule II to be managed and operated by the Navy Department for the National Housing Agency until such time as the Administrator may otherwise determine. Thereafter, by the Administrator's letter dated October 24, 1944, and in accordance with the Navy Department's request, this project was transferred from Schedule II to Schedule III, effective 1 July 1944. This latter transfer gave the Navy Department complete jurisdiction over this project.

The intervention of certain factors not in existence at the time of the Department's earlier determination that this project would be of permanent value to the Navy Department has resulted in the present determination that the project will not be of permanent value to the Navy Department.

In view of the foregoing, the Federal Public Housing Authority is requested to accept a re-transfer of jurisdiction of this "off-reservation" housing project. Such a retransfer of jurisdiction contemplates that the Federal Public Housing Authority would have complete control of the management and operation of the project.

Sincerely yours,

(S) R. MOREELL,

April 19, 1946.

Pursuant to Title 28, USC, Section 661, I certify this to be a true copy from the records of the Federal Public Housing Authority.

(S) RUTH E. BERMAN,
Attesting Officer.

23 *Plaintiff's Exhibit No. 8*

March 9, 1945.

MY DEAR MR. SECRETARY:

This is with reference to the letter of February 14 from Admiral Moreell of your Department to the Commissioner of the Federal Public Housing Authority, with reference to the retransfer of jurisdiction to the National Housing Agency of 600 housing units in the project designated as DC-49011. As stated in that letter, jurisdiction over this project was transferred to the Navy Department by letter dated March 21, 1942, upon your Department's determination that the project would be of permanent value to the Navy Department.

Notice is taken of the finding of your Department of the existence of certain factors at this time which indicates now that the project would not be of permanent value to your Department

and you request that we accept a retransfer of jurisdiction. This letter will serve as the acceptance of jurisdiction of said project pursuant to the terms of Public Law 849, 76th Congress, and will confirm our understanding that actual physical management of the project will be assumed by this Agency on April 1, 1945.

Sincerely yours,

JOHN B. BLANDFORD, JR.,
Administrator.

Apr. 19, 1946.
The Honorable The Secretary of Navy
Certified true copy:
Attested:

(S) JOHN M. FRANTZ,
Director, Administrative Services Division (Acting).

24 *Plaintiff's Exhibit No. 9*

Indenture of Lease between United States of America, acting through the Federal Public Housing Authority (hereinafter called the "Lessor") and the National Capital Housing Authority (hereinafter called the "Lessee")

Whereas, the Lessor is the owner of certain housing projects situated in the City of Washington, District of Columbia (hereinafter called the District), and in Montgomery County and Prince George's County, State of Maryland, designated as:

Project No. DC-49012, Stoddert Dwellings, District of Columbia.
Project No. DC-49016, Knox Hill Dwellings, District of Columbia.
Project No. DC-49017, Highland Dwellings, District of Columbia.
Project No. DC-49036, Syphax Houses, District of Columbia.
Project No. DC-49037, Benning Road Houses, District of Columbia.
Project No. DC-49038, 35th Street Houses, District of Columbia.
Project No. DC-49039, Foote Street Houses, District of Columbia.
Project No. DC-49040, Monroe Street Houses, District of Columbia.
Project No. DC-49044, 21st Street Houses, District of Columbia.
Project No. DC-49053, Bryant Street Houses, District of Columbia.
Project No. DC-49054, Lily Ponds Houses, District of Columbia.
Project No. DC-49055, Anthony Bowen Houses, District of Columbia.
Project No. DC-49059, Canal Street Houses, District of Columbia.
Project No. DC-49060, Georgia Avenue Houses, District of Columbia.

Project No. DC-49061, Tunlaw Road Houses, District of Columbia.

Project No. DC-49062, O'Brien Court Houses, District of Columbia.

Project No. DC-49063, Nichols Avenue Houses, District of Columbia.

Project No. DC-49065, 25th Street Houses, District of Columbia.

Project No. MD-18083, Carry Houses, Prince George's County, Md.

Project No. MD-18085, Fairway Houses, Montgomery County, Md.

Project No. MD-18211, Calvert Houses, Prince George's County, Md.

(which, as hereinafter in paragraph 1 described, is called the "Project" or the "demised premises") and desires to lease the Projects to the Lessee:

Now, therefore, this indenture of lease witnesseth:

Premises Leased

1. That the Lessor, in consideration of the premises, of the rents hereinafter reserved, and of the covenants, agreements and the terms herein contained on the part of the Lessee to be paid, kept and performed, has granted, demised and leased and by these presents doth grant, demise and lease to the Lessee, and the
25 Lessee hereby takes and hires the demised premises, consisting of the sites of the housing projects designated and officially recorded as Projects Nos. DC-49012, 49016, 49017, 49036, 49037, 49038, 49039, 49040, 49044, 49053, 49054, 49055, 49059, 49060, 49061, 49062, 49063, 49065, MB-18083, 18085 and 18211, by the Lessor, together with (i) the buildings and structures erected thereon or in the course of completion thereon by the Lessor, consisting generally of the numbers of buildings containing the numbers of dwelling units as set out in the following table:

Project No.	Number of Buildings	Number of Dwelling Units
DC-49012	86	200
DC-49016	81	250
DC-49017	91	350
DC-49036	20	146
DC-49037	69	138
DC-49038	13	75
DC-49039	29	168
DC-49040	17	90
DC-49044	6	36
DC-49053	5	32

Project, No.	Number of Buildings	Number of Dwelling Units
DC-49054	95	492
DC-49053	16	86
DC-49059	5	20
DC-49060	36	170
DC-49061	12	92
DC-49062	3	36
DC-49063	19	164
DC-49065	5	40
MD-18083	110	315
MD-18085	238	238
MD-18211	100	500

and (ii) all buildings, equipment, fixtures, appurtenances and supplies installed in or located in or located on the site of the Project at the Commencement date of this Lease or as may be thereafter installed or located thereon by the Lessor in the course of completion of said buildings and structures not heretofore completed; to have and to hold the demised premises with the appurtenances thereunto belonging for and during the term
26 commencing on a date to be specified by the Lessor in a written notice from the Lessor to the Lessee (such date being hereinafter called the "Commencement Date") and terminating on June 30, 1945, (hereinafter called the "Termination Date") unless the term is extended pursuant to the provisions of Paragraph 25 or unless sooner terminated in accordance with any other provisions of this Lease.

Fixed and Quarterly Rents

2. The Lessee, for and in consideration of said demise, agrees to pay to the Lessor (i) a fixed rent of Ten Dollars ($10.00) for the entire term of this Lease including any extension thereof pursuant to Paragraph 25 of this Lease and (ii) quarterly, on the 15th day of April, July, October and January of each year of the term of this Lease (including the fractional part, if any, of the initial quarterly period of the Lease term) and any extension thereof, or upon the sooner termination of this Lease in accordance with its provisions, a sum of money determined in the following manner: An amount equal to the difference between (a) the total expenses of the Lessee incurred in the operation of the Project for the immediately preceding quarterly period (including in the expenses for the initial quarterly or fractional quarterly period the said fixed rent heretofore paid) and (b) the total income of the Lessee, derived from the operation of the Project (each such amount being hereinafter referred to as "Quarterly Rent").

Budgets

3. The Project shall be operated by the Lessee in accordance with a budget approved by the Lessor. The Lessee shall, insofar as such action has not already been taken by the Lessor, submit to the Lessor a proposed budget of the management, operation, maintenance and administration expenses of the Project for the initial term of this Lease, and thereafter shall submit to the Lessor for its approval at least sixty (60) days before the commencement of each succeeding extended term, a budget for its approval on forms furnished by the Lessor.

27 Payments in Lieu of Taxes

4. Payments in lieu of taxes will be made by the Lessee, provided that prior to making any such payments there shall be submitted to the Lessor the amount of the proposed payment together with the computations, showing the value of the property upon which the tax is based, and any deductions that have been made because of expenditures by the Government for streets, utilities, or other public services, and provided further, no payment will be made by the Lessee until the amount of such payment is approved by the Lessor. The amounts of such payments shall be charged to the operating expenses of the Project.

Operation of Project

5. The Lessee shall provide all personnel, supplies and services necessary to properly manage, operate, maintain and administer the Project in accordance with the approved budget for each year; shall select occupants for the dwellings and other facilities of the Project and permit them to continue in occupancy only in strict accordance with approved standards for initial selection and continued occupancy and such further regulations as prescribed by the Lessee with the approval of the Lessor; and shall charge and collect rentals from occupants in accordance with approved schedules and rentals. The Lessee agrees that the personnel engaged in the management and operation of the Project shall be appointed in accordance with the rules and regulations of the United States Civil Service Commission in that all of the employees of the Lessee are subject to the Classification Act of 1923, as amended. No provision of this Lease shall be construed as depriving the State or any political subdivision thereof of its civil and criminal jurisdiction in and over the demised premises, or impair or alter the civil rights and duties of the Lessee under State or Local law.

28 Advances by the Lessor: Losses

6. The Lessor agrees to advance to the Lessee such funds as it deems necessary to provide working capital, or to cover anticipated deficits and expenses incurred by the Lessee if at any time during the term of this lease, or any extension thereof, Project revenues are not sufficient to defray the cost of managing, administering and operating the Project, in accordance with the approved current Operating Budget, or because of unanticipated extraordinary expenses approved by the Lessor. Such advances shall be deposited immediately in the Administration Fund and disbursed by the Lessee for the same purpose and in the same manner as the revenues and income from rentals and other sources, except as may be specifically authorized by the Lessor. Upon demand or within six (6) months from date of said advance, whichever occurs first, the whole or any such portion of said advances which, in the determination of the Lessor, are no longer necessary to defray said costs, shall be returned to the Lessor by the Lessee. The Lessor agrees to pay any losses incurred by the Lessee in the operation, administration, or management of the Project which result from compliance by the Lessee with the standards or requirements established by the Lessor for the operation, administration, or management of the Project in accordance with the provisions of this Lease and which the Lessor shall determine are true losses.

Revenues and Expenditures

7. The Lessee shall deposit all revenues derived from the management and operation of the Project (including, if any, rentals, from initial occupancy and before completion of the Project) in the Treasury of the United States. Withdrawals shall be made
29 in accordance with prescribed accounting procedure and to pay only proper expenses incurred in the management, operation, maintenance, and administration of the Project in accordance with the approved budget for the then fiscal year; *provided* that the Lessee may maintain a petty cash fund of not to exceed $1500 for all properties hereinbefore designated.

Accounts and Inspection

8. The Lessee shall at all times during the term of this Lease keep and maintain complete books, records, journals, audits, accounts, minutes of any proceedings, and other data reasonably pertinent to its management, operation, maintenance, and administration of the Project, disclosing the full and detailed nature of all transactions of the Lessee related to its undertakings under this Lease according to an accounting system and forms prescribed by the Lessor. All such books, records, journals, audits, accounts,

minutes, and other data shall be open to the inspection of an authorized representative or representatives of the Lessor at all times during regular business hours.

Furniture, Fixtures, and Supplies

9. The Lessee shall be responsible and accountable for all furniture, fixtures, and supplies now on the Project premises and for all additional equipment and supplies acquired for use in connection with the management, operation, maintenance, and administration of the Project during the term of this Lease and any extension thereof and the Lessee shall account therefor to the Lessor at such times as it may require.

Maintenance and Repair

10. The Lessee shall at all times maintain the Project in good repair, order and condition, suitable to the purposes thereof, to the extent that funds for such maintenance are available from the income of the Project and within the budget as approved by the Lessor, provided, however, that the Lessee shall make no major or extraordinary repairs or improvements in the Project without prior written approval of the Lessor.

Bonds and Insurance

11. Each employee or agent of the Lessee whose duties include the receiving or disbursing of funds in connection with the Project shall furnish a bond in such form, substance, and amount and with such sureties as shall be approved by the Lessor. The Lessee shall obtain such insurance as is deemed necessary to the proper operation of the Project by the Lessor.

Surrender of Premises

12. The Lessee agrees upon the termination of this Lease, to quit and surrender the demised premises to the Lessor in as good repair, order and condition as when delivered by the Lessor, ordinary wear and tear and loss, if any, by fire, tornado, earthquake, or any other casualty excepted, and at that time to duly deliver, assign and transfer to the Lessor (i) all equipment, supplies, and all other assets (including accounts receivable) then constituting the Project, whether acquired before or after the Commencement Date, and (ii) the then balance of the allotment after deducting therefrom an amount equal to all undischarged and proper liabilities and obligations incurred by the Lessee in accordance with the provisions of this Lease with regard to the Project.

Liability

13. The Lessor shall not be liable for any losses and damages arising out of personal injuries, property damage or for loss of life or property resulting from, or in any way connected with, the character, condition, change in condition or use of the demised premises. The Lessee under this Lease is an independent contractor and all persons employed by the Lessee shall be the Lessee's employees, servants, and agents and not the employees, servants and agents of the Lessor.

Assignment

14. The Lessee shall neither assign, mortgage nor pledge this Lease or any interest therein without the prior written consent of the Lessor.

Partial or Total Destruction of Premises

15. In event the Project is hereafter wholly destroyed or rendered wholly unfit for its use under the terms of this Lease, by fire, tornado, earthquake, or any other casualty, then the period of
31 this Lease shall terminate as of the date of such casualty. In event the Project is hereafter partially destroyed or rendered partially unfit for its use under the terms of this Lease by fire, tornado, earthquake or any other casualty, then the parties hereto shall enter into such equitable arrangements as shall be mutually satisfactory with respect to continuation of the terms of this Lease to that portion of the demised premises not so destroyed or rendered partially unfit for use thereunder. If the parties hereto are unable to make such mutually satisfactory arrangements, then either party may thereupon terminate the Lease upon written notice to the other party. In event this Lease is terminated for any one of the reasons stated in this paragraph, there shall be a prompt accounting as of the date of termination and a settlement between the Lessor and the Lessee according to the terms of this Lease and particularly the provisions of Paragraph 13 hereof.

Defaults and Reentry

16. Anything in this Lease to the contrary notwithstanding, in the event of default by the Lessee in the payment of any rent when due or violation of any other provision of this Lease, or if the powers of the Lessee to operate, manage and maintain the Project in accordance with the provisions of this Lease are in any way curtailed or limited by law or otherwise, or if the Lessor deems it to be in the public interest (in order to further the war efforts of the Federal Government) to terminate this Lease; then, upon the happening of any one or more of said events, the Lessor may terminate this Lease and all rights of the Lessee hereunder, and thereupon the

Lessor, its representatives, agents, or assigns, shall have the right, without further demand or notice, to reenter and take possession of the demised premises. The Lessee for itself and any successors in interest by operation of law or otherwise, hereby waives
32 any and all notice and demand for possession and agrees that upon any such default, violation, appointment or event, the Lessor may immediately re-enter and fully recover the demised premises and dispossess the Lessee or any said successors in interest without legal notice or the institution of any legal proceedings whatsoever. No member or officer of the Lessee shall be individually liable on any obligation assumed by the Lessee hereunder.

Arbitration

17. In the event that a controversy between the Lessor and the Lessee arises as to the interpretation or application of any of the provisions of this Lease, the Lessee shall have the right to appeal from the decision of the Lessor in the manner hereinafter provided. The Lessee shall serve, within ten (10) days after receipt of the Lessor's decision, a written notice upon the Lessor setting forth the decision from which it elects to appeal and the time (which shall not be less than fifteen (15) days nor more than thirty (30) days from the time such notice is served) and the place for the hearing on such appeal, at which time and place the Lessee shall be given a full opportunity to be heard. The hearing on the appeal shall be held before a Board of Review, which shall consist of three members. The Lessor and the Lessee shall each select one member of the Board and the two members so selected shall select the third member. The Board shall proceed promptly to conduct a hearing on the appeal and shall make a written report to the Lessor and to the Lessee, containing its findings and recommendations (which shall not be binding on the Lessor) not later than sixty (60) days from the date such written notice was served upon the Lessor by the Lessee. The Lessor shall not take final action with respect to the matters on appeal until the expiration of fifteen (15) days after it has received the written report of the Board, except that if the Board fails to conduct a hearing or submit a report within the times specified herein, the Lessor's original decision shall become
33 final upon the expiration of eighty-five (85) days after the Lessor has first notified the Lessee of its decision in the matter. Notwithstanding anything in this paragraph to the contrary, the Lessor shall at all times be free to make any final determinations and take such final action as may be necessary upon default of the Lessee, pursuant to the provisions of Section 16 of this Lease.

Waiver

18. The failure of the Lessor to insist, in any one or more instances, upon a strict performance of any of the covenants hereof; or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment of such covenant or option in any other instance; but the same shall continue and remain in full force and effect. The Lessee agrees that the rights and remedies given to the Lessor in this Lease are distinct, separate and cumulative remedies and that no one of them whether or not exercised by the Lessor, shall be deemed to be in exclusion of any of the others.

Peaceful Possession

19. The Lessor covenants and agrees that upon payment of the rents at the times and in the amounts in this Lease provided and upon the performance of all of the other covenants and undertakings of the Lessee under this Lease, the Lessee shall hold and enjoy the demised premises free from disturbances by any act of the Lessor, its successors or assigns for the term of this Lease and for any extension thereof.

Executive Orders

20. This Lease shall be subject to all applicable regulations set forth in Title II of Executive Order No. 9001 of December 27 1941, as extended by Executive Order No. 9116 of March 30, 1942, which are hereby incorporated in and made a part of t is Lease by reference. The Lessee warrants that it has not employed any person to solicit or secure this Lease upon any agreement for
34 a commission, percentage, brokerage, or contingent fee. Breach of this covenant shall give the Lessor the right to annul this Lease.

Member of Congress

21. No member of or Delegate to Congress, or Resident Commissioner, shall be entitled to any share or part of this Lease or any benefit that may arise therefrom.

Other Persons

22. No member, officer, agent or employee of the Lessee shall have any interest, direct or indirect, in any contract for property, materials, or services made or furnished in connection with the performance of any of the Lessee's undertakings under this Lease.

Notice to Lessor

23. Any notice, request, demand or other communication required to be given by the terms of this Lease to the Lessor by the Lessee shall be given or addressed to the Director, General Field Office, Federal Public Housing Authority, Longfellow Building, Connecticut and Rhode Island Avenues, N. W., Washington, D. C., and shall be deemed sufficiently given if sent to him by registered mail, addressed as aforesaid and deposited in the United States mail in a sealed envelope with sufficient postage prepaid thereon.

Notice to Lessee

24. Any notice, request, demand, or other communication required to be given by the terms of this Lease to the Lessee by the Lessor shall be deemed sufficiently given if sent by registered mail to the Lessee at 1737 L Street, N. W., Washington, D. C., deposited in the United States mail in a sealed postage prepaid or franked envelope.

Extension of Term

25. The term of this Lease shall be automatically extended from time to time for consecutive periods of one year each from and after the Termination Date, unless terminated sooner in accordance with the provisions of this Lease and unless either party thereto shall, at least thirty (30) days prior to the Termination Date or at least thirty (30) days prior to the termination of the last extended term of one year, duly notify the other party in writing of its intention to terminate the Lease in whole or in part on the Termination Date or on the last day of the last extended term, as the case may be. All of the provisions of this Lease shall continue in full force and effect for any and every extended term thereof.

Utility Contracts

26. This Lease is subject to the terms and conditions of the following described utility contracts to which the United States of America, as owner of the development, is a party:

1. TPS-47812 Potomac Electric Power Company
2. TPS-36687 Washington Gas Light Company
3. TPS-47268 Chesapeake and Potomac Telephone Company

The Lessee shall assume and discharge the obligations of the Lessor and shall act as the representative of the Lessor in dealing with the suppliers of Utility Services under said contracts, and shall enforce all rights of the Lessor thereunder. The Lessee shall

be responsible for renegotiation, renewal, or cancellation of said contracts with the approval of the Lessor.

In Witness Whereof, the parties hereto have executed this Lease this 1st day of July, 1944.

NATIONAL CAPITAL HOUSING AUTHORITY,
By (S) JOHN IHLDER.

Attest:
(S) JAMES RING.

Attest:
(S) MARGARET D. RIDGLY.

THE UNITED STATES OF AMERICA,
By (S) OLIVER C. WINSTON,
For the Federal Public Housing Commissioner.

36 *Plaintiff's Exhibit No. 10*

Amendment No. 2. Contract No. HA(DC-49012)mph-1

Amendment to Indenture of Lease between United States of America, acting through the Federal Public Housing Authority (hereinafter called the "Lessor"). and the National Capital Housing Authority (hereinafter called the "Lessee")

This Agreement entered into this 30 day of March, 1945, by the Lessor, represented by the officer executing this Agreement, and the Lessee;

WHEREAS, the Lessor by Lease Agreement dated July 1, 1944, granted, demised, and leased to the Lessee, and the Lessee did thereby take and hire from the Lessor the premises herein described consisting of 21 war housing projects in the District of Columbia-Metropolitan Area and containing 3,638 family dwelling units; and

WHEREAS, by Agreement dated September 1, 1944, between the Lessor and the Lessee, said Lease No. HA(DC-49012)mph-1 was amended to include two additional war housing projects, designated as DC-49101 and DC-49104; and

WHEREAS, the Lessor has, subsequent to the execution of said Lease Agreement dated July 1, 1944, and the Amendment thereto dated September 1, 1944, acquired an additional project situate in the District of Columbia, designated as Project DC-49011 (Bellevue), containing 601 family dwelling units, maintenance and management buildings, and buildings used for commercial purposes; and

WHEREAS, the Lessor desires to demise and lease and the Lessor is willing to take and hire the Project designated as DC-49011 for a term beginning April 1, 1945, and ending June 30, 1945, subject to all the terms, covenants, and conditions of the Lease Agreement

dated July 1, 1944, and as amended by Agreement dated September 1, 1944;

Now, Therefore, Witnesseth That the Lessor and Lessee in consideration of their mutual promises agree that the certain Indenture of Lease No. HA(DC-49012)mph-1 dated July 1, 1944, and amended by their Agreement dated September 1, 1944, be and it hereby is further amended by adding to Paragraph One—Premises Leased—of said Indenture of Lease dated as of July 1, 1944, the following Project, to wit:

Bellevue, DC-49011, District of Columbia

The Lessor hereby transfers and assigns to the Lessee all of its rights, title and interest to and in all choses in action, contracts, including tenant and commercial leases, and insurance policies in effect and used in the operation of Bellevue, DC-49011, as of the date of this Agreement for the purpose of facilitating the orderly operation of said Project, DC-49011.

37 The Lessor and the Lessee mutually agree that said Project, DC-49011, is granted, demised, leased and hired subject to all of the terms, covenants, conditions and agreements contained in the Indenture of Lease dated July 1, 1944, identified as No. HA(DC-49012)mph-1, in addition to the above provisions.

In Witness Whereof, the parties hereto have executed this Agreement as of the day and year first above mentioned.

National Capital Housing Authority,
By (S) John Ihlder.

Attest:
(S) James Ring.

The United States of America,
By (S) Oliver C. Winston,
For the Federal Public Housing Commissioner.

Attest:

38 *Plaintiff's Exhibit No. 11*

National Housing Agency
Washington

October 14, 1944.

My Dear Mr. Secretary:

In accordance with your letter of July 4, 1944, requesting the transfer to the jurisdiction of the Navy Department of the housing projects listed below, and, in view of your determination that these projects are considered to be permanently useful to the Navy, I

hereby transfer these projects to the jurisdiction of the Navy Department.

Project No.	*Location*	*Number of Family Units*
V. I. -53011	St. Thomas, Virgin Islands	50
P. R. -52022	San Juan, Puerto Rico	400
D. C. -49011	Washington, D. C.	600

These projects were originally constructed by you under the authority of Public Act 781, and all title papers in connection with these projects are presently in the custody of the Navy Department. The effective date of this transfer of jurisdiction is July 1, 1944.

This transfer is being made pursuant to Public Law 849, 76th Congress, Third Session, as amended.

Sincerely yours,

(signed) JOHN B. BLANDFORD, JR.,
Administrator

The Honorable The Secretary of Navy

Certified True Copy
Attested:

(S) LEWIS E. WILLIAMS,
Director, Administrative Services Division.

Plaintiff's Exhibit No. 12

National Housing Agency
Washington

March 21, 1942.

The Honorable The Secretary of the Navy.

MY DEAR MR. SECRETARY:

Enclosed is a copy of Order No. 1 of the National Housing Agency providing for the transfer of activities in connection with certain defense housing projects listed therein.

39 I have delegated to Leon H. Keyserling, Acting Federal Public Housing Commissioner, the determination of the date on which it will be feasible to transfer the projects listed on Schedule I of the attached Order. May I suggest that you designate someone on your staff to work with the Acting Federal Public

Housing Commissioner in effectuating the transfers directed by the enclosed Order.

Sincerely yours,

JOHN B. BLANDFORD, JR.,
Administrator.

Enclosure

Certified True Copy
Attested:

(S) LEWIS E. WILLIAMS,
Director, Administrative Services Division.

Defendants Exhibit No. 1

National Capital Housing
Washington 25, D. C.

December 7, 1945:

Hon. Jennings Randolph,
Chairman, Committee on the District of Columbia,
House of Representatives,
Washington, D. C.

DEAR MR. RANDOLPH:

Several members of the House District Committee, as well as other members of both the Senate and House, have recently written or telephoned me in connection with NCHA's proposed increase in the total utility charge to tenants at Bellevue Houses for the use of gas for space heating. It is my understanding that the Bellevue Citizens Association has made a formal prolist to you relative to this proposed increase in utility charges.

For your information, the reasons for making this increase necessary at Bellevue property are set forth in the enclosed report dated December 6, 1945. It is proposed to make this increase effective as of February 1, 1946.

NCHA is very glad to have had the tenants at Bellevue bring these matters to your attention and would appreciate having any comments you care to make in connection with the enclosed report.

Respectfully,

(S) JOHN IHLDER,
Executive Officer.

40 National Capital Housing Authority

Report to Members of Congress on Reasons for Increase in Charge Per Month for Gas for Space Heating at Bellevue Houses

December 6, 1945.

"The Federal Public Housing Authority which holds title to the property, has concurred in this belief (See letter attached, dated August 30, 1945)"

Defendants' Exhibit No. 2

National Capital Housing Authority

December 11, 1945.

Mr. Oliver C. Winston,
Director, General Field Office,
Federal Public Housing Authority,
Longfellow Building,
Washington 25, D. C.

Re: Bellevue Houses, DC-49011

DEAR MR. WINSTON:

In as much as FPHA holds title to the property.

Very truly yours,

(S) JOHN IHLDER.

41 In the Municipal Court of the District of Columbia

Memorandum—April 18, 1947

These cases were remanded to this Court by the Municipal Court of Appeals for further proceedings in accordance with its opinion.

The actions were set for trial by jury but upon agreement between counsel the jury trial was waived and the case submitted to the Court upon the stipulation that "these causes may be finally disposed of upon the amended complaints, answers, interrogatories to the plaintiff, and the answers, pre-trial stipulation," and numerous other exhibits.

Plaintiff's position being substantially similar to its original claim, it is deemed advisable to consider the case in the light of defendants' request for special findings as set out in the stipulation.

1. Defendants' first contention has been more than amply answered by the Municipal Court of Appeals in its decision in the case of Ridgely vs. U. S., 45 A 2d 475, 73 W.L.R. 191. Further comment is un--cessary.

2. It has been stipulated that the houses in question "were constructed by the Navy Department under authority of Sec. 201 of the 2nd Suppl. National Defense Appropriations Act, approved September 9, 1940, 54 Stat. 872, 883, and that they were not constructed under the provisions of the Lanham Act, 1940." The maintenance of these actions is consequently not restricted by the latter Act, and the National Capital Housing Authority, being an instrument of the Federal Government, the United States is deemed the landlord and a proper plaintiff here.

3. The Municipal Court of Appeals has previously determined in this very action that "such exactness of pleadings is not required, particularly in Landlord & Tenant Court where informality of pleadings has always been the rule. DeBobula v. Coppedge, D. C. Mun. App. 40 A 2d 255. Moreover, Landlord and Tenant Rule 4(c), which is applicable here, provides that 'all pleadings shall 42 be so constructed as to do substantial justice.'"

4 & 5. Having determined that the United States of America is the landlord within the meaning of that term (32 above) and that the National Capital Housing Authority is the operative instrumentality thereof, it follows that the signing of the notices to quit here in question by an employee of National Capital Housing Authority was adequate.

6. "Where a notice in writing to quit is executed by an agent in behalf of his principal, the ordinary mode of indicating the agency in use in other written instruments should be employed. The general rule that the signature is sufficient if the relationship is unmistakably indicated holds true in regard to notices to quit." *Jones, L. & T., Sec. 265.*

Here the notices were signed by W. W. Adams, Property Manager, on letterheads of the National Capital Housing Authority. It follows from what has gone before that the had the authority for so doing.

7. Considered in the light of the circumstances peculiar to federally operated, subsidized housing projects, it is concluded that the District of Columbia Emergency Rent Act of December 2, 1941, D. C. Code, 1940, Tit. 45-1601-1611, is not applicable to the cases here in question.

8. It has been previously determined, No. 2 above, that the Lanham Act, 1940, is not applicable to this project, and it is concluded Executive Order 9070 in no way affects the maintenance of these actions.

Accordingly, a finding for the plaintiff will be entered as a matter of record on April 21, 1947.

Date: April 18, 1947.

(S) AUBREY B. FENNELL,
Judge.

43 IN THE MUNICIPAL COURT OF THE DISTRICT OF COLUMBIA

JUDGMENT—April 21, 1947

JUDGE FENNELL

The Court has this day ordered that in each of the above-entitled causes, that a finding be, and it is hereby entered in favor of the plaintiff for possession.

44 THE MUNICIPAL COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA

No. 532

REGINALD P. WITTEK, APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the Municipal Court for the District of Columbia, Civil Division

OPINION—September 10, 1947

Argued August 18, 1947

Ward B. McCarthy for appellant.
Floyd L. France for appellee.
Before CAYTON, Chief Judge, and HOOD and CLAGETT, Associate Judges.

CLAGETT, *Associate Judge:* This appeal involves the right of the United States Government acting through the National Capital Housing Authority to dispossess, without complying with the District of Columbia Emergency Rent Act, a tenant in a defense housing project known as "Bellevue Houses" located in southwest Washington. On a previous appeal from a judgment of the Landlord and Tenant branch of the Municipal Court dismissing the government's complaint we reversed upon the ground that the record was insufficient for us to pass upon the merits of the controversy. *United States* v. *Wittek*, 48 A. 2d 895; 74 W. L. R. 1151. The complaint having been amended and the deficiencies in the

previous record having been supplied by stipulation, the trial court gave judgment for possession in favor of the United States, and the tenant prosecutes this new appeal.

As amended the complaint named the United States of America as plaintiff and the tenant as defendant. It was filed by Floyd L. France, "acting under authority of the Attorney General and at the request of the Executive Officer of the National Capital
45 Housing Authority." In the complaint it was alleged that the premises were in the possession of the defendant as a month to month tenant of the plaintiff at a monthly rental of $38.20, that the rent had been increased to $43 a month by the National Capital Housing Authority and the defendant had been requested to execute a lease at the new rental but had refused to do so and that as a result a thirty days' notice to quit terminating the tenancy had been served upon defendant in accordance with District of Columbia law. None of the grounds for possession provided for by the District of Columbia Emergency Rent Act were alleged, the government claiming that the Rent Act did not apply to suits brought by the federal government for possession of government housing. The trial court upheld this position and also overruled several technical contentions of the tenant.

The issues on this appeal are best summarized by the following statement of errors claimed by the tenant.

1. The United States of America was improper party plaintiff.

2. The written thirty days' notice was invalid.

3. The provisions of the District of Columbia Emergency Rent Act apply to defense housing.

4. Where the United States of America is party plaintiff, exclusive jurisdiction is vested in the District Court of the United States for the District of Columbia.

5. Defendant was denied due process of law.

I

Was United States of America Proper Party Plaintiff?

It is the tenant's position that the suit should not have been brought in the name of the United States because either the National Capital Housing Authority or the Federal Public Housing Administration was the proper party plaintiff. The basis of his position with respect to the National Capital Housing Authority as the proper party plaintiff is that such agency, formerly the Alley Dwelling Authority of the District of Columbia,[1] had taken over

[1] Code 1940, 5-101 et seq., as amended; see 11 Fed. Reg. 10111 (1946) et seq.

management and control of the Bellevue housing project under a so-called lease from the Federal Public Housing Administra-
46 tion, a constituent unit of the National Housing Agency, created by an executive order of the President as a consolidation of the various housing activities of the federal government.[2] The National Housing Agency in turn had taken over management and control of the project under authority of the President's executive order from the Navy Department, which constructed the project pursuant to power vested in it by Congress in 1940 for the purpose of providing housing for enlisted men of the Navy and Marine Corps and their families, field employees of the Navy, and workers with families engaged in essential national defense activities.[3] Defendant urges that as lessee of the property the National Capital Housing Authority is the agency authorized to receive rents from the tenants, and thus the suit should have been brought in its name. Defendant urges further that if the National Capital Housing Authority was not the proper party plaintiff the suit should in any event have been brought by the Federal Public Housing Administrator. He bases this position upon the fact that such administrator is the successor in interest of the Federal Works Administrator, and that under an amendment to the so-called Lanham Act Congress provided that "any proceedings for the recovery of possession of any property or project *developed* or *constructed* under this subchapter shall be brought by the Administrator in the courts of the States having jurisdiction of such causes and the laws of the States shall be applicable thereto."[4] (Italics supplied.)

We believe that the trial court correctly ruled that the United States was entitled to bring this action. It was stipulated that the project in question was not "*constructed*" under the provisions of the Lanham Act, and we believe it equally true that it was not "*developed*" under that act. It follows that the quoted amendment to the Lanham Act does not apply to recovery of possession of units of this project. Furthermore and more important, the National Capital Housing Authority, the National Housing Agency, and the Federal Public Housing Administration are all, so far as the subject matter of this action is concerned, direct instrumentalities or agencies of the United States, and it has been uni-
47 formly held that the United States may bring suit in its own name to enforce rights of any of its departments, bureaus,

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[2] Exec. Order No. 9070, Feb. 24, 1942, 7 Fed. Reg. 1529.

[3] Section 201, Second Supplemental National Defense Appropriation Act (1941), 54 Stat. 883.

[4] 42 U. S. C. A. § 1522.

or corporations regardless of the name by which they are known.[5] Here title to the property in question was vested in the United States; all of the funds for the construction of the project came from the federal treasury; under the so-called lease under which the National Capital Housing Authority manages the property all proceeds from rentals go into the federal treasury; the National Capital Housing Authority, the National Housing Agency, and the Federal Public Housing Administration were created by the United States for the purpose of carrying out governmental functions. Regardless, therefore, of whether either of the named agencies could have filed the suit, we conclude that the right of the United States to sue in its own name is altogether clear.

II

Validity of the Thirty Days' Notice

Defendant's position with respect to the thirty days' notice is closely related to his contention regarding the proper party plaintiff. The notice to quit relied upon by the government as terminating the tenancy was written on a letterhead of the National Capital Housing Authority and signed by the property manager of the project. D. C. Code 1940, 45-902, provides that a tenancy from month to month may be terminated by a thirty days' notice in writing "from the landlord to the tenant." Defendant urges that if the United States is the landlord and entitled to file the suit then it follows that the notice to quit should also have been given by the United States and that since it was in fact given by a representative of the National Capital Housing Authority it was insufficient to terminate the tenancy. However, as we have pointed out above, this project is owned by the United States and, as has been said in connection with another agency, the National Capital
48 Housing Authority is "plainly one of the many administrative units of the United States Government, established to carry out the functions delegated to it by Congress. * * * In short, it is an integral part of the governmental mechanism. And the use of a name other than that of the United States cannot

[5] *United States* v. *Summerlin*, 310 U. S. 414; *Erickson* v. *United States*, 264 U. S. 246; *North Dakota-Montana Wheat Growers' Ass'n* v. *United States*, 8 Cir., 66 F. 2d 573, cert. denied 291 U. S. 672; *United States* v. *Czarnikow-Rionda Co.*, 2 Cir., 40 F. 2d 214, cert. denied 282 U. S. 844; *Russell Wheel & Foundry Co.* v. *United States*, 6 Cir., 31 F. 2d 826; cf. *Department of Agriculture* v. *Remund*, decided Mar. 17, 1947, 91 L. Ed. Adv. Op. 780; *Cherry Cotton Mills, Inc.*, v. *United States*, 327 U. S. 536; *Herren* v. *Farm Security Administration*, 8 Cir., 153 F. 2d 76.

change that fact."[6] The government, obviously, can act only through agents. It follows that the notice to quit was given by the landlord and therefore complied fully with the statutory requirement.

III

Do the Provisions of the District of Columbia Emergency Rent Act Apply to This Project?

Defendant's principal contention is that the District of Columbia Emergency Rent Act[7] applies by its explicit terms to all landlords and all tenants of all housing accommodations (as distinguished from commercial property) in the District of Columbia and hence that Bellevue Houses is embraced within its terms. That act, which under present law will remain in effect until March 1948, provides that rents may not be increased without the prior approval of the Rent Administrator. It also provides in Section 45-1605(b) that "No action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant * * * so long as the tenant continues to pay the rent to which the landlord is entitled" unless certain enumerated conditions exist, such as that the landlord desires possession for his own use and occupancy or the tenant has violated an obligation of his tenancy. Admittedly, none of these enumerated conditions existed in this case nor are any of them alleged in the complaint. The issue is clear, therefore, that if the provisions of the Rent Act apply to this housing project then the government has failed to establish a case to dispossess the tenant. It follows equally that if the Rent Act does not apply the government is entitled to possession because under the general law of the District of Columbia a tenancy
49 from month to month may be terminated by giving a thirty days' notice to quit.

We have concluded that the District of Columbia Emergency Rent Act does not apply to this housing project, and hence that the government was entitled to bring this suit without alleging any of the grounds for possession provided for under that act. While the Rent Act by its terms applies to all landlords, the United States is not mentioned specifically and "There is an old and well-known rule that statutes which in general terms divest pre-existing rights

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[6] *Department of Agriculture* v. *Remund*, decided Mar. 17, 1947, 91 L. Ed. Adv. Op. 780, 782.

[7] Code 1940 (Supp. V), 45-1601 et seq.

or privileges will not be applied to the sovereign without express words to that effect."[8]

Furthermore, there are such conflicts between the local Rent Act and the statutes authorizing the construction and operation of the houses in this particular project as to strengthen our conviction that Congress did not intend the local Rent Act to apply to the project. For example, by the terms of the Second Supplemental National Defense Appropriation Act, 1941, *supra*, occupancy of these houses was limited to Navy personnel with families and Navy employees with families. Thus if a tenant ceases to be the head of a family or ceases to work in a Naval establishment, he is no longer eligible under the law to continue occupancy of such premises, but such change of status would not be a reason for eviction under the District Rent Act. Similarly, the District Rent Administrator is restricted as to the reason for which he may grant rent increases, but under the acts of Congress creating federal housing such restrictions do not apply. It is significant, we think, that by the Emergency Price Control Act,[9] under which rents and eviction practices for defense areas outside of the District of Columbia were regulated until recently, the National Rent Administrator made regulations under which federal housing accommodations rented to Army or Navy personnel, including civilian employees of the War and Navy Departments, were made subject to rent schedules specified by those departments.[10] It is not contended that the local rent administrator was granted such authority. Throughout the war emergency
50 the local rent administrator has acquiesced in the regulation of rents and eviction practices by the federal authorities in federal government housing in the District of Columbia and such administrative construction of the law, while not binding on the courts, merits some consideration. It appears clear, therefore, that the United States was entitled to bring this suit without regard to the provisions of the local Rent Act.

IV

Since the United States Is the Party Plaintiff, Was Exclusive Jurisdiciton Vested in the District Court of the United States for the District of Columbia?

Defendant urges that since the United States Government is the party plaintiff in the present suit the United States District Court

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[8] *United States* v. *United Mine Workers of America*, decided Mar. 6, 1947, 91 L. Ed. Adv. Op. 595, 604, and cases cited therein.

[9] 50 U. S. C. A. Appendix 902(b)(c)(d).

[10] Rent Regulation for Housing, Oct. 31, 1945, Section 6(c)(2), 10 Fed. Reg. 13528, 13534.

for the District of Columbia had exclusive jurisdiction, and hence that the Municipal Court was without jurisdiction. A similar contention was raised before us in *Ridgley v. United States*, 45 A. 2d 475, 73 W. L. R. 1069, and decided contrary to tenant's position. The tenant has advanced no new arguments on the point and therefore we adhere to our previous position.

V

Due Process of Law

Defendant urges that he was deprived of due process of law in that Landlord and Tenant rule 13 of the Municipal Court, providing that the complaint and summons in Landlord and Tenant actions shall be in the form specified in the rule, was not complied with. Included in that form is space for showing grounds for possession under the Rent Act. The amended complaint in the present action gave no reasons under the Rent Act for dispossessing the tenant. Since, as already indicated, we hold that the Rent Act does not apply to the present suit, it is obvious that it was not necessary to allege grounds for possession under that act. The complaint contained all necessary allegations under the applicable statute.

51

Since we conclude that the trial court correctly decided each of the issues involved, it results that the judgment below must be

Affirmed.

52 THE MUNICIPAL COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA

No. 532

October Term, 1946

REGINALD P. WITTEK, APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE

JUDGMENT—September 10, 1947

Appeal from the Municipal Court for the District of Columbia, Civil Division. This cause came on to be heard on the transcript of record from the Municipal Court for the District of Columbia, and was argued by counsel. On consideration whereof, it is hereby ordered and adjudged by this Court that the judgment of the said Municipal Court, in this cause, be and the same is hereby affirmed.

BRICE CLAGETT,
Associate Judge.

September 10, 1947.

53-54 UNITED STATES COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA

No. 9646

January Term, 1948

Municipal Court of Appeals No. 532

REGINALD P. WITTEK, PETITIONER,

v.

UNITED STATES OF AMERICA, RESPONDANT

Before: CLARK, WILBUR K. MILLER and PRETTYMAN, *JJ.*

ORDER ALLOWING APPEAL—January 16, 1948

On consideration of the petition for allowance of an appeal from the judgment of the Municipal Court of Appeals for the District of Columbia entered herein September 10, 1947, and of the briefs of the parties on said petition, It is

Ordered by this Court that an appeal from said judgment be, and it is hereby, allowed, limited to the questions (1) whether the conditions imposed by the District of Columbia Emergency Rent Act on suits for possession apply where such a suit is brought by the United States as landlord, and (2) whether the Municipal Court has jurisdiction of civil suits brought by the United States in which the amount claimed does not exceed $3,000.00 or whether the District Court has exclusive jurisdiction over all civil suits brought by the United States in the District of Columbia.

Per Curiam.

Dated January 16, 1948.

55 UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT

No. 9646

REGINALD P. WITTEK, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the Municipal Court of Appeals for the District of Columbia

Argued June 10, 1948

OPINION—September 27, 1948

Mr. Ward B. McCarthy for appellant.

Mr. Floyd L. France, Attorney, Department of Justice, with whom Messrs. Roger P. Marquis, Frederick William Smith and John F. Cotter, Attorneys, Department of Justice, were on the brief, for appellee.

Before Edgerton, Clark and Prettyman, JJ.

PRETTYMAN, J.:

The United States brought an action in the Landlord and Tenant Branch of the Municipal Court of the District of Columbia to evict appellant upon his refusal to vacate a house in a defense housing project after his tenancy had been terminated by a duly given thirty days' notice. The notice was consequent to appellant's refusal to pay an increase in monthly rent from $38.20 to $43.00. The project was owned by the United States and managed by the National Housing Authority through its lessee, the National Capital Housing Authority. The rent was increased by an administrative determination of the latter Authority and without reference to the District of Columbia Emergency Rent Act.[1] After some

[1] Act of Dec. 2, 1941, 55 Stat. 788, D. C. Code, tit. 45, §§ 1601-1611 (Supp. V).

preliminary proceedings,[2] the trial court entered judgment for the United States. The Municipal Court of Appeals for the District of Columbia affirmed.[3] We allowed an appeal to this court for purposes of a limited review. Two questions are to be decided:

1. Whether the Municipal Court has jurisdiction of civil suits brought by the United States seeking recovery of possession of real property situated within the District of Columbia; and

56 2. Whether the conditions imposed by the District of Columbia Emergency Rent Act on suits for possession apply where such a suit is brought by the United States as landlord.[4]

1. The Municipal Court clearly had jurisdiction of the action. The statute gives that court, as presently constituted, the jurisdiction which the Municipal Court theretofore had,[5] and such jurisdiction included actions to recover possession of real estate when a tenancy is terminated and the tenant, after notice, refuses to surrender possession.[6]

The contrary argument is that the District of Columbia Code gives the District Court of the United States for the District of Columbia jurisdiction over all civil actions in which the United States is plaintiff.[7] But that provision does not purport to confer exclusive jurisdiction, and it is in fact not different in substance from the clause of the United States Code which confers jurisdiction

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[2] United States v. Wittek, 48 A. 2d 805 (Mun. Ct. App. D. C. 1946).

[3] Wittek v. United States, 75 Wash. Law Rep. 982 (1947).

[4] In its order permitting this appeal, this court framed the first of the above two questions as follows: "Whether the Municipal Court has jurisdiction of civil suits brought by the United States in which the amount claimed does not exceed $3,000.00, or whether the District Court has exclusive jurisdiction over all civil suits brought by the United States in the District of Columbia." Later examination shows that monetary limitations on the jurisdictions of the local courts are not before us by the facts of the case *sub judice*. This appeal was briefed and argued on the basis of the original question. However, no prejudice to either party results in this particular instance, since the core of either question is the effect of the statute (see note 7 *infra*) which confers upon the District Court jurisdiction in civil cases in which the United States is plaintiff. That key question was thoroughly briefed and argued.

[5] Act of Apr. 1, 1942, 56 Stat. 192, D. C. Code § 11-755 (Supp. V).

[6] 31 Stat. 1193, 1382 (1901), as amended, 35 Stat. 623 (1909), 41 Stat. 555 (1920), D. C. Code §§ 11-735-37 and 45-910 (1940).

[7] 19 Stat. 253 (1877), D. C. Code § 11-306 (1940).

upon all District Courts of the United States in "all suits of a civil nature . . . brought by the United States".[8] It has long been established that this latter provision does not prevent the United States from appearing as party plaintiff in the local courts of a State.[9] If it may so appear despite the provision of the United States Code, we see no reason why it may not so appear in the local courts of the District of Columbia despite the almost identical provision of the District Code.

2. We think that the District of Columbia Emergency Rent Act applies to the United States as a landlord so as to bar this instant action. The Act itself says that it applies to "any landlord".[10] Whether such general language as "person" in a statute (or, as here, "landlord") includes the United States, is a matter of
57 context and statutory purpose—the "legislative environment".[11] The cause and the objective of the Rent Act are too well known to merit extensive elaboration. The impact of the defense program, with its concentration of workers in certain areas, created a shortage of housing which threatened to throw rents into an upward spiral, with consequent effects upon the cost of living and an impulse toward inflation. Congress acted in rigid and unmistakable fashion. It froze rents as of a fixed pre-war date.[12] It declared its purposes in a long opening section of the statute.[13] It defined "landlord" and "person" in broad terms.[14] This Act

[8] 36 Stat. 1091 (1911), as amended, 28 U. S. C. A. § 41(1) (Supp. 1947).

[9] Cotton v. United States, 11 How. 229, 13 L. Ed. 675 (1850); United States v. Bank of New York Co., 296 U. S. 463, 80 L. Ed. 331, 56 S. Ct. 343 (1936).

[10] D. C. Code § 45-1605(b) (Supp. V):

"No action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant : . . so long as the tenant continues to pay the rent to which the landlord is entitled, unless—

"(1) The tenant is (a) violating an obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or any regulation or order thereunder applicable to the housing accommodations involved . . .)"

[11] Georgia v. Evans, 316 U. S. 159, 161, 86 L. Ed. 1346, 62 S. Ct. 972 (1942); United States v. Cooper Corp., 312 U. S. 600, 85 L. Ed. 1071, 61 S. Ct. 742 (1941); Ohio v. Helvering, 292 U. S. 360, 370, 78 L. Ed. 1307, 54 S. Ct. 725 (1934).

[12] D. C. Code § 45-1602 (Supp. V).

[13] D. C. Code § 45-1601 (Supp. V).

[14] D. C. Code § 45-1611(g) and (h) (Supp. V).

was not passed for the purpose of regulating the relationships between landlord and tenant, or even for a mere regulation of rents that they might be fair and reasonable. Its purpose was to prevent practices tending to increase the cost of living. Deviations from its rigid fixations were permitted only upon proof of "peculiar circumstances", substantial changes in taxes or other maintenance or operating costs, or substantial capital improvements.[15]

At about the same time, Congress enacted a somewhat similar statute for the nation, including maximum rents for defense-area housing accommodations.[16] That Act specifically provided that the term "person" as used therein included "the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of the foregoing".[17] Thus, so far as the national Act is concerned, there is no doubt that the United States is a landlord, and if the housing accommodations here involved had been in any defense area in the United States except in the District of Columbia, this landlord could not have raised these rents by mere administrative determination outside the processes of the statute.

Of course, the argument can be made that since Congress specifically named the United States as a "person" in the national Act but did not do so in the local Act, it meant to include the United States in the former but not in the latter. If there be any rationale to such a distinction, we fail to perceive it, and we are not inclined to give weight to a theoretical inference of that sort when we are dealing with a problem of the scope of price-and-rent control and the purpose of Congress is so crystal clear. Interpreting "person" in this statute in accordance with that purpose, as the rules of construction say we should, we think it includes any and every landlord, even the United States. Raising the rents of Government housing is just as much an increase in the cost of living as raising the rents in any other housing project. This is a matter of public interest and not a matter of landlords' rights, sovereign or otherwise. We are inclined to think that the specific contingency of Government ownership of housing accommodations did not
58 occur to the members of Congress in relation to the local Act, which passed about two months before the national Act was adopted, but that it was noted in the course of the latter consideration and the intention of Congress in respect to the subject was then and there made clear.

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[15] D. C. Code § 45-1604 (Supp. V).

[16] Sec. 2(b) of the Emergency Price Control Act of 1942, 56 Stat. 25, as amended, 59 Stat. 306 (1945), 60 Stat. 671 (1946), 50 U. S. C. A. App. § 902(b) (Supp. 1947).

[17] Sec. 302(h) of the Act, 56 Stat. 37, 50 U. S. C. A. App. § 942(h).

The United States makes this argument:

> "A mere reading of the above [the statutory declaration of purposes] shows that Congress did not have the United States in mind in enacting the Emergency Rent Act, since it could not have had in contemplation that the United States was an owner who would engage in 'profiteering and other speculative and manipulative practices.'"

Of course, Congress did not "have in mind" any particular landlord. What interests us in the argument is that this landlord, attempting to raise its rents by 12½ per cent, says that the statute does not prevent it from doing so, since Congress could not have thought that it would attempt to do so. The potential ramifications of such a rule of statutory construction are fascinating to contemplate. And, obviously, the true premise to the Government's conclusion must be the opposite of that which it states in that argument *i.e.*, the premise must be that Congress must have had in mind that the Government would raise its rents and intended that it should be permitted to do so.

We are presented with the argument that since this housing project was itself a defense project, intended for defense workers, any restriction upon control of its rents would impede the national defense program and thus violate one of the stated purposes of the Rent Act. The answer is, as we have already said, that the Rent Act does not purport to regulate the relationship of landlord and tenant, but merely fixes the rent ceiling, and in that fixation the protection of defense workers was a primary concern.

There is some argument that this project was a "Lanham Act" project and that the rents were placed by that statute in the control of the Federal Works Administrator,[18] and that, therefore, the Rent Act could not apply. Without entering upon the labyrinth of transfers through which this property passed, and from which we would have to conclude whether or not it was governed by the Lanham Act, we think the answer to the problem is in that provision of the Emergency Price Control Act which specifically subjects the United States to its provisions, including its rent control provisions. The amendment to the Lanham Act was enacted on January 21, 1942, and the Emergency Price Control Act on January 30, 1942. It seems clear that whatever authority the Housing Administrator and the War and Navy Departments had to fix initial rents and to control other features of the rentals, they were still subject to the rent control provisions of the Price Act when it came to raising rents.

[18] Sec. 7 (Later renumbered "304") of the Act of Oct. 14, 1940, 54 Stat. 1127, as amended by Act of Jan. 21, 1942, 56 Stat. 12, 42 U. S. C. A. § 1544.

That fact answers the argument here made that "Lanham Act" property was not subject to rent control by any authority other than the Housing Administrator.

We cannot refrain from commenting upon the curious spectacle of one agency of the Government, the National Capital Housing
59 Authority, asserting a right to violate a principle so insistently and emphatically proclaimed by the rest of the Government as essential to the public welfare. This Authority acts by and on behalf of its principal, the United States, and so must be treated as though it were in fact the whole of the executive branch of Government. But strong evidence would have to be presented to convince us that it was within the intent of Congress that while no other landlord could imperil the economic status of tenants in the District of Columbia, nevertheless the United States, in its capacity as landlord of defense housing, could raise its rents by the unimpeded administrative determination of this lessee Authority.

Appellee relies principally upon *United States* v. *Mine Workers*[19] for the proposition that a statute does not apply to the United States unless it expressly says so. This is a familiar and well-established rule, but it is subject to the other rule which we have discussed above, that where the statute applies to "persons" and defines "person" in the broadest terms, the inclusion *vel non* of the United States is a matter of "legislative environment". We think that to be the rationale of the opinion in the *Mine Workers* case. The Court did not rest upon the stated rule as absolute, but said, ". . . we are inclined to give it much weight here" and "But we need not place entire reliance on this exclusionary rule."[20] It went on to examine the full text of the statute, its purposes, and its legislative history. It found clauses which "affirmatively suggest that the United States, as an employer, was not meant to be included."[21] Upon the whole of that consideration, it reached its conclusion. The same sort of process in the case at bar leads to the opposite result.

We do not have here the problem with which the Second Circuit Court of Appeals dealt in *United States* v. *Weisenbloom*.[22] The question there was whether the United States was subject to a New York State statute. The power of the State to regulate activities of the Federal Government was a primary concern, and in view of the grave doubt upon that question, the court construed the statute as not including the United States. No question of power is involved

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[19] 330 U. S. 258, 272-3, 91 L. Ed. 595, 67 S. Ct. 677 (1947).

[20] *Id.* at 273.

[21] *Id.* at 275.

[22] Decided June 7, 1948.

in the present case, as the local Rent Act was an act of Congress which had ample power in the matter.

The case will be remanded to the Municipal Court of Appeals with instructions to enter orders in accordance with this opinion.

Remanded with instructions.

EDGERTON, J., concurs in the result.

60 UNITED STATES COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 9646, April Term, 1948

REGINALD P. WITTEK, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the Municipal Court of Appeals for the District of Columbia.

Before: EDGERTON, CLARK and PRETTYMAN, JJ.

JUDGMENT—September 27, 1948

This cause came on to be heard on the transcript of the record from the Municipal Court of Appeals for the District of Columbia, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said Municipal Court of Appeals on appeal in this cause be, and it is hereby, reversed, and that this case be, and it is hereby, remanded to the said Municipal Court of Appeals with instructions to enter orders in accordance with the opinion of this Court.

Per Circuit Judge PRETTYMAN.

Dated September 27, 1948.

Circuit Judge EDGERTON concurs in the result.

61 UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT

No. 9646

REGINALD P. WITTEK, APPELLANT,

v.

UNITED STATES OF AMERICA, APPELLEE

DESIGNATION OF RECORD

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint appendix.
2. Minute entry of argument.
3. Opinion.
4. Judgment.
5. This designation.
6. Clerk's certificate.

PHILIP B. PERLMAN,
Solicitor General.

Receipt of copy hereof this 10 day of December, 1948, is hereby acknowledged.

WARD B. MCCARTHY,
Attorney for Reginald P. Wittek.

62 UNITED STATES COURT OF APPEALS, FOR THE DISTRICT OF COLUMBIA CIRCUIT

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, formerly United States Court of Appeals for the District of Columbia, hereby certify that the foregoing pages numbered from 1 to 61, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties, and the proceedings of the said Court of Appeals as designated by counsel in the case of: Reginald P. Wittek, Appellant, vs. United States of America, Appellee, No. 9646, October Term, 1948, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 15th day of December, A. D. 1948.

JOSEPH W. STEWART,
Clerk of the United States Court of Appeals for the District of Columbia Circuit. (Seal.)

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Supreme Court of the United States

No. 473—October Term, 1948

Order allowing certiorari—Filed March 14, 1949

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

No. 473

In the Supreme Court of the United States

OCTOBER TERM, 1948

UNITED STATES OF AMERICA, PETITIONER

v.

REGINALD P. WITTEK

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 473

UNITED STATES OF AMERICA, PETITIONER

v.

REGINALD P. WITTEK

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment entered in this case on September 27, 1948, by the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The opinion of the Municipal Court of Appeals for the District of Columbia (R. 35–41) is reported at 75 Wash. Law Rep. 982, 54 A. 2d 747. The opinion of the Court of Appeals (R. 43–49) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on September 27, 1948 (R. 49). The

jurisdiction of this Court is invoked under 28 U. S. C. sec. 1254 (1).

QUESTION PRESENTED

Whether the United States, in its capacity as owner of defense housing situated within the District of Columbia, is a "landlord" within the meaning of the District of Columbia Emergency Rent Act, and hence cannot increase the rentals on such housing without complying with the procedure prescribed by the Act.

STATUTES INVOLVED

The relevant statutory provisions are set out in the appendix, *infra*, 15–24.

STATEMENT

On October 15, 1946, the United States filed in the Municipal Court for the District of Columbia an amended complaint for possession of real estate (R. 8–9), in which it was alleged that the United States was entitled to possession of premises located in the District of Columbia, held by the defendant without right, and that the defendant was in possession of the premises as a month to month tenant of the plaintiff.

The complaint stated that the property is a housing unit in a defense housing project known as "Bellevue Houses" which is owned by the United States and was constructed by the Navy Department under section 201 of the Second Supplemental National Defense Appropriation Act,

1941, approved September 9, 1940, 54 Stat. 872, 883; that under the authority of section 201 of the 1941 Act, section 7 of the Lanham Act of October 14, 1940, 54 Stat. 1125, 42 U. S. C. 1544, and Executive Order 9070, 7 Fed. Reg. 1529, the management and administration of Bellevue Houses were transferred to the National Housing Administrator. It was further alleged that the Administrator by lease delegated such authority and management to the National Capital Housing Authority; that the defendant entered into possession during August 1946,[1] upon payment of a monthly rental of $38.20; that the rent was subsequently raised to $43.00 per month by administrative determination of the National Capital Housing Authority in accordance with section 201 of the Second Supplemental National Defense Act, 1941, and section 7 of the Lanham Act; that the defendant refused to execute a lease calling for the new rental and refused to pay such rental; that a thirty-day notice to quit was served upon the defendant on February 28, 1946, terminating the tenancy, and that the increase in rent was made without regard to the provisions of the District of Columbia Emergency Rent Act of December 2, 1941, 55 Stat. 788, 45 D. C. Code 1601–1611. The amended complaint also alleged that the ground

[1] This was a typographical error. In his answer respondent alleged that he entered into possession in 1943 (Ans. R. 12). The actual date does not appear to be important here.

upon which possession was sought was that the tenancy was terminated by the notice to quit served upon the defendant as required by 45 D. C. Code 902.

In pre-trial proceedings (R. 13–17) the parties stipulated that the action by the United States is grounded upon notice to quit; that the premises are housing accommodations in the District of Columbia; that no breach of covenant is involved, that the housing was constructed by the Navy Department under section 201 of the Second Supplemental National Defense Appropriation Act, 1941, 54 Stat. 872, 883, and that they were not constructed under the provisions of the Lanham Act, 1940; that in 1941 the United States took title to the premises; and that the notice to quit, dated February 25, 1946 (Pltf.'s Ex. 3, R. 17), was received by the defendant.

The parties having stipulated that the cause might be finally disposed of by the court upon the pleadings, the pre-trial stipulation, and certain exhibits, the trial court on April 18, 1947, filed a memorandum (R. 33–35) in which it dealt with and rejected all of defendant's requested findings which were based on various defenses, including the assertion that the suit should be dismissed for failure to comply with the District of Columbia Emergency Rent Act. So far as here material, the court found that it had jurisdiction of the cause, and that the District of Columbia Emer-

gency Rent Act does not apply. On April 21, 1947, the trial court entered an order awarding possession to the Government (R. 35). Defendant appealed to the Municipal Court of Appeals for the District of Columbia, which affirmed in all respects (R. 35–41).

On September 20, 1947, under the provisions of Title 11 D. C. Code 773, respondent petitioned the Court of Appeals for the District of Columbia Circuit for allowance of an appeal.* While respondent there sought a review of all questions decided by the Municipal Court of Appeals, the Court of Appeals, on January 16, 1948, allowed an appeal limited to two questions (R. 42). The Court of Appeals, by decision of September 27, 1948, disposed of the first question by sustaining the jurisdiction of the Municipal Court. However, the decision was reversed upon the second issue, the court holding that the United States was subject to the restrictions imposed by the District of Columbia Emergency Rent Act on suits for recovery of possession of real property in the District of Columbia (R. 43–49). Its judgment reversed and remanded the cause to the Municipal Court of Appeals with instructions to

*The allowance of an appeal under this section is not a matter of right but of sound discretion. Rule 1 of the Rules of the United States Court of Appeals for the District of Columbia Circuit governing Review of Cases from the Municipal Court of Appeals.

enter orders in accordance with the opinion (R. 49)."[3]

REASONS FOR GRANTING THE WRIT

1. On the merits, the decision below is clearly erroneous. So far as the language of the District of Columbia Emergency Rent Act is concerned, no specific reference is made therein to the United States or to any of its departments or agencies. The term "landlord" is broadly defined in the Act to include "an owner, lessor, sublessor, or other person entitled to receive rent for the use or occupancy of any housing accommodations." "Person" is defined to include "one or more individuals, firms, partnerships, corporations, or associations and any agent, trustee, receiver, assignee, or other representative thereof."[4] In holding that the United States was included within these definitions although not expressly mentioned, the Court of Appeals has departed from a principle of construction settled by a long

[3] Since under 45 D. C. Code 1603 and 1604 (pp. 17–18, *infra*), rent increases can only be lawful if approved by the District of Columbia Rent Administrator, and the increase here in question was not so approved, it follows that the opinion of the Court of Appeals holds that the suit by the United States is barred by 45 D. C. Code 1605, and its judgment is a final one disposing of the case.

[4] The Act defines "housing accommodations" to mean "any building, structure or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes in the District of Columbia * * *." 45 D. C. Code 1611 (a).

series of decisions of this Court. *Dollar Savings Bank* v. *United States*, 19 Wall. 227, 239; *United States* v. *Herron*, 20 Wall. 251, 263; *United States* v. *American Bell Telephone Co.*, 159 U. S. 548, 554; *United States* v. *Stevenson*, 215 U. S. 190, 197; *United States* v. *Mine Workers*, 330 U. S. 258, 270, 272; *United States* v. *Wyoming*, 331 U. S. 440, 449. In the *Mine Workers* case, 330 U. S. at 272–273, this Court said: "There is an old and well-known rule that statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect * * * [unless] there were extraneous and affirmative reasons for believing that the sovereign should also be deemed subject to a restrictive statute."

In the present case, there are affirmative grounds for believing that Congress did not intend that rent controls with respect to defense housing owned by the United States within the District of Columbia should be administered by a local administrative officer appointed by the Commissioners of the District of Columbia, under a statute prescribing standards which are manifestly inapplicable to Government-owned defense housing. The question of statutory construction in this case is not, as the Court of Appeals evidently believed, whether Congress intended that the National Capital Housing Authority should be entirely free of any review by a higher author-

ity, but rather whether Congress intended that such review should be exercised by the Rent Administrator of the District of Columbia within the framework and procedures of the District of Columbia Act.

The history of the District of Columbia Emergency Rent Act, and its relation to the national rent control statutes, demonstrates clearly that Congress, in enacting the District of Columbia law, did not thereby subject Government-owned defense housing within the District to its restrictive provisions. The District of Columbia Emergency Rent Act became law on December 2, 1941, and its provisions, so far as material here, have not been substantially altered since that time. National rent controls first appeared in the Emergency Price Control Act of January 30, 1942, 56 Stat. 23. Section 1 (c) of that Act provided that its provisions "shall be applicable to the United States, its Territories and possessions, and the District of Columbia." Section 2 (b) authorized the Price Administrator to regulate rentals of housing accommodations in any "defense-rental area", which was defined in Section 302 (d) to include "the District of Columbia and any area designated by the Administrator as an area where defense activities have resulted or threatened to result in an increase in the rents for housing accommodations inconsistent with the purposes of this Act." Section 302 (h) of the

Act defined "person" as including "the United States or any agency thereof."

It clearly appears, therefore, that Congress in 1942 expressly conferred on the National Price Administrator authority to control rentals of federal defense housing in the District of Columbia. And by regulation the Price Administrator provided that rentals for federal housing outside the District of Columbia, rented to Army or Navy personnel, including civilian employees of the War and Navy Departments, should be the rents fixed by those Departments. (Rent Regulation for Housing, October 31, 1945, Section 6 (c) (2), 10 Fed. Reg. 13528, 13534.) The Price Administrator apparently did not deem it necessary to exercise his control over such housing within the District of Columbia.

Prior to the amendment in 1947 of the Emergency Price Control Act of 1942, there could be no doubt that the authority of the National Price Administrator was paramount and exclusive with respect to Government-owned defense housing within the District of Columbia, and that the District of Columbia Emergency Rent Act could not be construed to give the District Administrator such authority. In 1947, when Congress modified rent controls, the Emergency Price Control Act was amended in several material respects. Section 202 (a) of the Housing and Rent Act of 1947, 61 Stat. 193, 50 U. S. C.

App., Supp. I, 1881, does not include the United States or any of its political subdivisions in its definition of "person." The latter term is defined to include only "an individual, corporation, partnership, association, or any other organized group of persons, or a legal successor or representative of any of the foregoing." And in Section 209 (b), it was provided that "Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered."

The clear implication of the 1947 amendments to the national Act is that Congress intended to remove rent control restrictions previously applicable to the United States or any of its departments or agencies. It is submitted that the Court of Appeals erred in disregarding the plain inferences to be drawn from the legislation.

2. The defense housing owned by the Government in the District of Columbia stands on an entirely different footing from ordinary private housing. The purpose of the District of Columbia Emergency Rent Act was to freeze rentals existing on January 1, 1942, on the assumption that they represented a fair rental as a result of bargaining by the parties. And, as the court below

stated (R. 46), under the Act "Deviations from its rigid fixations were permitted only upon proof of 'peculiar circumstances', substantial changes in taxes or other maintenance or operating costs, or substantial capital improvements."

The rentals established for federal housing, however, were established on an entirely different basis. A description in detail of the basis for rentals and the method of administration is to be found in the Annual Report of the National Capital Housing Authority for the year ending June 30, 1947, pages 5–10. Briefly, an economic or cost rent is established. Many of the tenants whose economic condition makes them unable to pay such cost rent are permitted to pay a lower rental, the balance being made up by subsidy. As the financial situation of these tenants progresses, their rent is increased proportionately. Moreover, the size of the particular premises occupied by each tenant is determined according to the size of his family, and thus eviction or transfer to a different dwelling may be required if the family increases or decreases in size. When a tenant's income exceeds the allowable maximum (which is now $3,000 per year) he is "graduated" to private housing as soon as it can be found at a rental which he can afford. To stimulate search for private housing, "comparable rents" for these tenants are established which at the maximum are equal to the rents tenants would be required to pay in private housing.

The District of Columbia Emergency Rent Act is framed on a wholly different basis. The Rent Administrator, in determining whether increases should be permitted, must find justification in the landlord's increased costs or capital improvements, and the like. The Act would not permit increases of rental or changes in premises simply as a result of an improvement in the economic condition of a tenant or an increase in the size of his family. To apply the Emergency Rent Act to federal housing in the District could, therefore, require a complete revision in the method of administration of such developments.

The Court of Appeals intimated in its opinion that the rent increase involved in this case was arbitrary and unwarranted. No such claim has ever been made in this case, and the record plainly shows that the contrary is true. The increase was necessitated by a change in the source of heating gas from the District of Columbia sewage disposal plant (which furnished the gas free) to the Washington Gas Light Company. See Annual Report of National Capital Housing Authority (1947), page 31.

Moreover, while the instant case involves only the question as to power to evict a tenant for failure to pay the increased rental, other provisions of the Rent Control Act make it even clearer

that it was not intended to apply to federal housing. Criminal penalties are imposed upon landlords who violate the Act, and tenants are given the right to recover from landlords penalties in double the amount of excess rent, plus attorneys' fees and costs. 45 D. C. Code 1610 (a) and (b), *infra*, pp. 20–21. In the absence of explicit provisions, Congress clearly could not have intended to subject the United States to such penalties.

3. So far as the importance of the question is concerned, the National Capital Housing Authority manages 7,217 dwellings in the District of Columbia. In addition to the administrative burdens which would be imposed upon the local Rent Administrator,[5] the decision below may subject the United States to suits for the recovery of double the amount of rent increases collected since 1941. This potential liability has been estimated as more than $400,000.

[5] We are advised that the Rent Administrator of the District of Columbia "has never contended the Rent Control Act of the District applied to the properties of the National Capital Housing Authority, as the rents have been fixed by the Authority on the basis of the ability of the tenant to pay rather than upon the rents charged for comparable housing accommodations, which is the criterion fixed in the Rent Act for the determination of rentals by the Rent Administrator," and that if the decision below stands, "the Rent Administrator will be confronted with the almost impossible task, with his present force, of attempting to fix the rental on the approximately 8,000 rental units of the National Capital Housing Authority."

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

DECEMBER 1948.

APPENDIX

Section 201 of the Second Supplemental National Defense Appropriation Act, 1941, approved September 9, 1940, 54 Stat. 872, 885, reads as follows:

> SEC. 201. To the President for allocation to the War Department and the Navy Department for the acquisition of necessary land and the construction of housing units, including necessary utilities, roads, walks, and accessories, at locations on or near Military or Naval Establishments, now in existence or to be built, or near privately owned industrial plants engaged in military or naval activities, which for the purposes of this Act shall be construed to include activities of the Maritime Commission, where the Secretary of War, the Secretary of the Navy, or the Chairman of the Maritime Commission shall certify that such housing is important for purposes under their respective jurisdiction and necessary to the national defense program, $100,000,000: *Provided,* That the average unit cost of such housing projects, including acquisitions of land and the installation of necessary utilities, roads, walks, accessories and collateral expenses shall not be in excess of $3,500: *Provided further,* That in carrying out the purposes of this section the Secretary of War and the Secretary of the Navy may utilize such other agencies of the United States as they may determine upon: *Provided further,* That the Secretary of War and the Secretary of the Navy, at

their discretion, are hereby authorized to rent such housing units, upon completion, to enlisted men of the Army, Navy, Marine Corps with families, to field employees of the Military and Naval Establishments with families, and to workers with families who are engaged, or to be engaged, in industries essential to the military and naval national defense programs, including work on ships under the control of the Maritime Commission. * * * ,

Sections 2, 3, 4, 5, 10, and 11 of the District of Columbia Emergency Rent Act of December 2, 1941, 55 Stat. 788, 45 D. C. Code, sections 1602, 1603, 1604, 1605, 1610, and 1611, so far as here material, read as follows:

45 D. C. Code 1602. Maximum rent ceilings and minimum service standards.

(1) On and after the thirtieth day following the enactment of this chapter, subject to such adjustments as may be made pursuant to sections 45–1603 and 45–1604, maximum-rent ceilings and minimum-service standards for housing accommodations excluding hotels, in the District of Columbia shall be the following:

(a) For housing accommodations rented on January 1, 1941, the rent and service to which the landlord and tenant were entitled on that date.

(b) For housing accommodations not rented on January 1, 1941, but which had been rented within the year ending on that date, the rent and service to which the landlord and tenant were last entitled within such year.

(c) For housing accommodations not rented on January 1, 1941, nor within the year ending on that date, the rent and

service generally prevailing for comparable housing accommodations as determined by the Administrator.

45 D. C. Code 1603. General adjustment of maximum rent ceilings.

Whenever in the judgment of the Administrator a general increase or decrease since January 1, 1941, in taxes or other maintenance or operating costs or expenses has occurred or is about to occur in such manner and amount as substantially to affect the maintenance and operation of housing accommodations generally or of any particular class of housing accommodations, he may by regulation or order increase or decrease the maximum-rent ceiling or minimum-service standard, or both, for such accommodations or class thereof in such manner or amount as will in his judgment compensate, in whole or in part, for such general increase or decrease. Thereupon such adjusted ceiling or standard shall be the maximum-rent ceiling or minimum-service standard for the housing accommodations subject thereto.

45 D. C. Code 1604. Petition for adjustment.

(a) Any landlord or tenant may petition the Administrator to adjust the maximum-rent ceiling applicable to his housing accommodations on the ground that such maximum-rent ceiling is, due to peculiar circumstances affecting such housing accommodations, substantially higher or lower than the rent generally prevailing for comparable housing accommodations; whereupon the Administrator may by order

adjust such maximum-rent ceiling to provide the rent generally prevailing for comparable housing accommodations as determined by the Administrator.

(b) Any landlord may petition the Administrator to adjust the maximum-rent ceiling or minimum-service standard, or both, applicable to his housing accommodations to compensate for (1) a substantial rise, since January 1, 1941, in taxes or other maintenance or operating costs or expenses, or (2) a substantial capital improvement or alteration made since January 1, 1941; whereupon the Administrator may by order adjust such maximum-rent ceiling or minimum-service standard in such manner or amount as he deems proper to compensate therefor, in whole or in part, if he finds such adjustment necessary or appropriate to carry out the purposes of this chapter: *Provided,* That no such adjusted maximum-rent ceiling or minimum-service standard shall permit the receipt of rent in excess of the rent generally prevailing for comparable housing accommodations as determined by the Administrator.

45 D. C. Code 1605. Prohibitions.

(a) It shall be unlawful, regardless of any agreement, lease, or other obligation heretofore or hereafter entered into, for any person to demand or receive any rent in excess of the maximum-rent ceiling, or refuse to supply any service required by the minimum-service standard, or otherwise to do or omit to do any act in violation of any provision of this chapter or of any regulation, order, or other requirement thereunder, or to offer or agree to do any of the foregoing. Nothing herein shall be construed to require the refund of any rent

paid or payable for the use or occupancy of housing accommodations prior to the 30th day following the enactment of this chapter.

(b) No action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant, notwithstanding that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled, unless—

(1) The tenant is (a) violating an obligation of his tenacy (other than an obligation to pay rent higher than rent permitted under this Act or any regulation or order thereunder applicable to the housing accommodations involved or an obligation to surrender possession of such accommodations) or (b) is committing a nuisance or using the housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes, or

(2) The landlord seeks in good faith to recover possession of the property for his immediate and personal use and occupancy as a dwelling, or

(3) The landlord has in good faith contracted in writing to sell the property for immediate and personal use and occupancy as a dwelling by the purchaser and that the contract of sale contains a representation by the purchaser that the property is being purchased by him for such immediate and personal use and occupancy, or

(4) The landlord seeks in good faith to recover possession for the immediate purpose of substantially altering, remodeling, or demolishing the property and replacing it with new construction, the plans for which altered, remodeled, or new construc-

tion having been filed with and approved by the Commissioners of the District of Columbia.

45 D. C. Code 1610. Enforcement—Penalties.

(a) If any landlord receives rent or refuses to render services in violation of any provision of this chapter, or of any regulation or order thereunder prescribing a rent ceiling or service standard, the tenant paying such rent or entitled to such service, or the Administrator on behalf of such tenant, may bring suit to rescind the lease or rental agreement, or, in case of violation of a maximum-rent ceiling, an action for double the amount by which the rent paid exceeded the applicable rent ceiling and, in case of violation of a minimum-service standard, an action for double the value of the services refused in violation of the applicable minimum-service standard or for $50, whichever is greater in either case, plus reasonable attorneys' fees and costs as determined by the court. Any suit or action under this subsection may be brought in the municipal court of the District of Columbia regardless of the amount involved, and the municipal court is hereby given exclusive jurisdiction to hear and determine all such cases.

(b) Any person who willfully violates any provision of this chapter or any regulation, order, or requirement thereunder, and any person who willfully makes any statement or entry false in any material respect in any document or report required to be kept or filed thereunder, and any person who willfully participates in any fictitious sale or other device or arrangement with intent to evade this chapter or

any regulation, order, or requirement thereunder, shall be prosecuted therefor by the corporation counsel of the District of Columbia or an assistant, on information filed in the police court of the District of Columbia, and shall upon conviction be fined not more than $1,000 or imprisoned for not more than one year, or both.

45 D. C. Code 1611. Definitions.

As used in this chapter—

(a) The term "housing accommodations" means any building, structure or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes in the District of Columbia (including, but without limitation, houses, apartments, hotels, rooming- or boarding-house accommodations, and other properties used for living or dwelling purposes) together with all services supplied in connection with the use or occupancy of such property.

* * * * *

(g) The term "landlord" includes an owner, lessor, sublessor, or other person entitled to receive rent for the use or occupancy of any housing accommodations.

(h) The term "person" includes one or more individuals, firms, partnerships, corporations, or associations and any agent, trustee, receiver, assignee, or other representative thereof.

The Emergency Price Control Act of January 30, 1942, 56 Stat. 23, provided:

Section 1 (c):

The provisions of this Act shall be applicable to the United States, its terri-

tories and possessions, and the District of Columbia.

* * * * *

Section 2 (b):

Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give due consideration to the rents prevailing for such accommodations, or comparable accommodations, on or about April 1, 1941 (or if, prior or subsequent to April 1, 1941 defense activities shall have resulted or threatened to result in increases in rents for housing accommodations in such area inconsistent with the purposes of this Act, then on or about a date (not earlier than April 1, 1940), which in the judgment of the Administrator, does

not reflect such increases), and he shall make adjustments for such relevant factors as he may determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs within such defense-rental area. In designating defense-rental areas, in prescribing regulations and orders establishing maximum rents for such accommodations, and in selecting persons to administer such regulations and orders, the Administrator shall, to such extent as he determines to be practicable, consider any recommendations which may be made by State and local officials concerned with housing or rental conditions in any defense-rental area.

* * * * *

SEC. 302. As used in this Act—

* * * * *

(d) The term "defense-rental area" means the District of Columbia and any area designated by the Administrator as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of this Act.

* * * * *

(h) The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing: *Provided,* That no punishment provided by this Act shall apply to the United States, or to any such government, political subdivision, or agency.

The material portion of the Housing and Rent Act of 1947 approved June 30, 1947, 61 Stat. 193, provides:

> Section 202 (a):
>
> The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or a legal successor or representative of any of the foregoing.
>
> * * * * * *
>
> Section 209 (b):
>
> Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided*, That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account of service-connected disability or disabilities, exceeds the allowable maximum.

No. 473

In the Supreme Court of the United States

OCTOBER TERM, 1948

UNITED STATES OF AMERICA, PETITIONER

v.

RICHARD P. BUTLER

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 473

UNITED STATES OF AMERICA, PETITIONER

v.

REGINALD P. WITTEK

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

On pages 12 and 13 of the Government's petition for a writ of certiorari filed in this case, it is pointed out that section 10 of the District of Columbia Emergency Rent Act gives a tenant the right to recover by judicial proceedings double the amount of excess rent, plus attorneys' fees and costs, and that the decision of the Court of Appeals in this

case may subject the United States to suits for double the amount of rent increases collected since 1941—a potential liability which has been estimated as more than $400,000.

In this connection the attention of the Court is invited to an opinion by Judge Myers of the Municipal Court for the District of Columbia, dated January 25, 1949, in the case of *United States of America* v. *Morris Kalstein, et al.*, No. L. & T. 242-947. In that case the United States sued the defendants to recover possession of premises for non-payment of rent. Defendants counterclaimed for double the amount of rental increases collected, plus attorneys' fees and costs, relying on the District of Columbia Emergency Rent Act. The Government moved to dismiss on the ground that no consent to such suit had been given by the United States. The Municipal Court, in overruling the motion to dismiss, held that the United States is subject to all the penalties to which any other landlord is subjected by the Rent Act. This holding was based on the decision of the Court of Appeals in the *Wittek* case. The opinion in the *Kalstein* case appears as an appendix to this memorandum.

The *Kalstein* case is but the first of a number of such suits which it may be anticipated will be filed against the Government, and it emphasizes the importance of the question presented in the *Wittek* case.

PHILIP B. PERLMAN,
Solicitor General.

FEBRUARY, 1949.

APPENDIX

IN THE MUNICIPAL COURT FOR THE DISTRICT OF COLUMBIA

Landlord and Tenant Branch

No. L & T 242-947

UNITED STATES OF AMERICA, PLAINTIFF

v.

MORRIS KALSTEIN, ET AL., DEFENDANTS

MEMORANDUM OPINION

This matter came on for hearing on a motion by the plaintiff United States of America to dismiss a counterclaim filed by the defendants on the ground that the Municipal Court for the District of Columbia has no jurisdiction to determine such counterclaim as this would amount to entertaining a suit against the United States for which no statutory authority exists consenting to such suit.

The original complaint was filed by the United States of America against the defendants Mr. and Mrs. Kalstein to obtain possession of premises No. 717 46th Street Southeast in the District of Columbia on the grounds that defendants were in arrears of rent in the amount of $284.00 covering the period from June, 1948, to January 1, 1949 at the rate of $44.00 per month. Defendants in their counter-

claim contend that the plaintiff rented the premises to them on September 16th, 1943, at the rate of $26.00 per month which became and continued to be the maximum rent ceiling but that for the period from August 1, 1946 to February 1, 1948, the plaintiff demanded and received rent at the monthly rate of $33.00 and starting March 1, 1948, at the rate of $44.00 per month, and that therefore there is an overcharge in violation of the D. C. Emergency Rent Act of $612.00.

The sole question presented by the motion is whether or not the plaintiff United States of America, having been held to be a "landlord" under the District of Columbia Emergency Rent Act by the United States Court of Appeals for the District of Columbia in "Wittek *v.* U. S. A." decided September 27, 1948 (Case No. 9646)—F. (2d)—is excluded from being subject to the enforcement penalties prescribed by Section 10(a) of the Act which provides—

> "If *any landlord* receives rent * * * in violation of any provision of this Act, or of any regulation or order thereunder prescribing a rent ceiling * * *, the tenant paying such rent * * * may bring in case of a violation of a maximum rent-ceiling, an action for double the amount by which the rent exceeded the applicable rent ceiling * * * plus reasonable attorneys' fees and costs as determined by the Court."

There is no doubt that the Municipal Court for the District of Columbia has exclusive jurisdiction of all suits under the District of Columbia Emer-

gency Rent Act. (Title 45, Sect. 1610, D. C. Code.) Consideration has been given to the Tucker Act (28 U. S. C. Sec. 41 (20)) which gave jurisdiction to the United States District Court over all claims, counterclaims, etc., against the United States up to $10,000.00 concurrent with the jurisdiction heretofore exclusively conferred on the Court of Claims. The Court, however, feels that the later enactment of the D. C. Rent Act gave jurisdiction in this case to the Municipal Court.

A careful reading of the opinion of the court in the Wittek Case *supra* fails to reveal any statement that the United States would be subject only to certain provisions of the Rent Act and would be exempt from the provisions setting forth enforcement penalties and procedure. The court of appeals used this language—

> "* * * The cause and the objective of the Rent Act are too well known to merit extensive elaboration. The impact of the defense program, with its concentration of workers in certain areas, created a housing shortage which threatened to throw rents into an upward spiral, with consequent effects upon the cost of living and an impulse towards inflation. Congress acted in rigid and unmistakable fashion. It froze rents as of a fixed pre-war date. It defined "landlord" and "person" in broad terms. * * * Its purpose was to prevent practices tending to increase the cost of living. Deviations from its rigid fixations were permitted only upon proof of 'peculiar circumstances' * * *

> * * * Interpreting "person" in this statute in accordance with that purpose, as the rules of construction say we should, we think it includes any and every landlord, even the United States. Raising the rents of Government housing is just as much an increase in the cost of living as raising the rents on any other housing project. This is a matter of public interest and not a matter of landlords' rights, sovereign or otherwise. * * *
>
> * * * We cannot refrain from commenting upon the curious spectacle of one agency of the Government * * * asserting a right to violate a principle so insistently and emphatically proclaimed by the rest of the Government as essential to the public welfare * * *"

In the Wittek Case, the controversy arose as a result of the tenant's refusal to pay an increase in monthly rent from $38.20 to $43.00. In the present case, the United States, the tenants allege, went ahead and raised the rents to amounts in excess of the maximum ceilings set by the Rent Act and collected such excess rent from them.

Can it be argued that the United States can violate the Rent Act as a "landlord" by collecting rent in excess of the maximum ceiling thereunder and yet not be subject to the penalties for such violation of the Statute? In other words, although the United States as "landlord" can evict tenants and collect rents under the Rent Act, yet as the same "landlord" it is not subject to the penalties for violation of the same statute.

Having elected to enter the competitive housing field as a "landlord", and not having been specif-

ically exempted by Congress from accountability for violation of the D. C. Rent Act, it seems wholly consistent to apply all provisions of the housing statute to the United States as to any other landlord.

There is nothing in the language of the Rent Act read in the light of the decision of the court in the Wittek Case that gives the United States as "landlord" any such exclusion from the application of the penalties where indicated for any other landlord under the same circumstances.

The Municipal Court of Appeals has handed down a recent opinion in the case of Dunning v. Hagner & Co., (No. 724) decided January 7, 1949, in which it has held that Section 10 must be read in connection with Section 5 which provides "It shall be unlawful * * * for *any person* to demand or receive any rent in excess of the maximum ceiling." The same case holds that the action under Section 10 is "to recover a statutory obligation arising from an unlawful act."

As the United States Court of Appeals has already held that a "person" includes "any and every landlord, even the United States," it is the opinion of this Court that in its capacity as "landlord" in this case, the United States must answer and defend any counterclaim filed to recover a statutory obligation for an unlawful act.

Accordingly the motion to dismiss the counterclaim is overruled.

JANUARY 25, 1949.

FRANK H. MYERS,
Judge.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1949 [illegible]

No. 473

In the Supreme Court of the United States

OCTOBER TERM, 1948

UNITED STATES OF AMERICA, PETITIONER

v.

REGINALD P. WITTEK

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the Municipal Court of Appeals for the District of Columbia (R. 35-41) is reported at 75 Wash. Law Rep. 982, 54 A. 2d 747. The opinion of the Court of Appeals for the District of Columbia Circuit (R. 43-49) is reported at 171 F. 2d 8.

JURISDICTION

The judgment of the Court of Appeals was entered on September 27, 1948 (R. 49). The peti-

tion for a writ of certiorari was filed on December 21, 1948, and was granted on March 14, 1949 (R. 51). The jurisdiction of this Court rests upon 28 U. S. C. sec. 1254.

QUESTION PRESENTED

Whether the United States, in its capacity as owner of defense housing situated within the District of Columbia, is a "landlord" within the meaning of the District of Columbia Emergency Rent Act, and hence cannot increase the rentals on such housing without complying with the standards and procedures prescribed by that Act.

STATUTES INVOLVED

Section 201 of the Second Supplemental National Defense Appropriation Act, 1941, approved September 9, 1940, 54 Stat. 872, 883; sections 2, 3, 4, 5, 10 and 11 of the District of Columbia Emergency Rent Act of December 2, 1941, 55 Stat. 788, 45 D. C. Code, sections 1602, 1603, 1604, 1605, 1610 and 1611; sections 1(c), 2(b) and 302(d) and (h) of the Emergency Price Control Act of January 30, 1942, 56 Stat. 23; and sections 202(a) and 209(b) of the Housing and Rent Act of June 30, 1947, 61 Stat. 193, so far as here material, appear in the Appendix, *infra*, pp. 32-42. Section 7 of the Act of October 14, 1940, 54 Stat. 1125, 1127, as amended, 42 U.S.C. 1544; section 6 of the Act of January 21, 1942, 56 Stat. 11, 12; and section 5 of the Act of June 28, 1941, 55 Stat. 361, 363, are quoted from at pp. 17-18; *infra*.

STATEMENT

On October 15, 1946, the United States filed in the Municipal Court for the District of Columbia an amended complaint for possession of real estate (R. 8-9), in which it was alleged that the United States was entitled to possession of certain premises located in the District of Columbia, held by the defendant without right, and that the defendant was in possession of these premises as a month-to-month tenant of the plaintiff.

The complaint stated that the property involved consists of a housing unit in a defense housing project known as Bellevue Houses which is owned by the United States and was constructed by the Navy Department under section 201 of the Second Supplemental National Defense Appropriation Act, 1941, approved September 9, 1940, 54 Stat. 872, 883; and that under the authority of section 201 of the 1941 Act, section 7 of the Lanham Act of October 14, 1940, 54 Stat. 1125, 42 U.S.C. 1544, and Executive Order 9070, 7 Fed. Reg. 1529, the management and administration of Bellevue Houses were transferred to the National Housing Administrator. It was further alleged that the Administrator by lease delegated such authority and management to the National Capital Housing Authority; that the defendant entered into possession during August 1946,[1] upon payment of a

[1] This was a typographical error. In his answer respondent alleged that he entered into possession in 1943 (R. 12). The actual date does not have any bearing on the issues before this Court.

monthly rental of $38.20; that the rent was subsequently raised to $43.00 per month by administrative determination of the National Capital Housing Authority in accordance with section 201 of the Second Supplemental National Defense Appropriation Act, 1941, and section 7 of the Lanham Act; that the defendant refused to execute a lease calling for the new rental and refused to pay such rental; that a thirty-day notice to quit was served upon the defendant on February 28, 1946, terminating the tenancy, and that the increase in rent was made without regard to the provisions of the District of Columbia Emergency Rent Act of December 2, 1941, 55 Stat. 788, 45 D. C. Code 1601-1611. The amended complaint also alleged that the ground upon which possession was sought was that the tenancy was terminated by the notice to quit served upon the defendant as required by 45 D. C. Code 902.

In pretrial proceedings (R. 13-17) the parties stipulated that the action by the United States is grounded upon notice to quit; that the premises are housing accommodations in the District of Columbia; that no breach of covenant is involved, that the housing was constructed by the Navy Department under section 201 of the Second Supplemental National Defense Appropriation Act, 1941, 54 Stat. 872, 883, and that they were not constructed under the provisions of the Lanham Act, 1940; that in 1941 the United States

took title to the premises; and that the notice to quit, dated February 25, 1946 (Pltf. Ex. 3, R. 17), was received by the defendant.

The parties having stipulated that the cause might be finally disposed of by the court upon the pleadings, the pretrial stipulation, and certain exhibits, the Municipal Court on April 18, 1947, filed a memorandum (R. 33-35) in which it dealt with and rejected all of defendant's requested findings which were based on various defenses, including the argument that the suit should be dismissed for failure to comply with the District of Columbia Emergency Rent Act. So far as here material, the court found that it had jurisdiction of the cause, and that the District of Columbia Emergency Rent Act does not apply. On April 21, 1947, the trial court entered an order awarding possession to the Government (R. 35). Defendant appealed to the Municipal Court of Appeals for the District of Columbia, which affirmed in all respects (R. 35-41).

On September 20, 1947, under the provisions of Title 11 D. C. Code 773, respondent petitioned the Court of Appeals for the District of Columbia Circuit for allowance of an appeal.[2] While respondent there sought a review of all questions decided by the Municipal Court of Appeals, the Court of

[2] The allowance of an appeal under this section is not a matter of right but of sound discretion (Rule 1 of the Rules of the United States Court of Appeals for the District of Columbia Circuit governing Review of Cases from the Municipal Court of Appeals).

Appeals, on January 16, 1948, allowed an appeal limited to two questions (R. 42). On September 27, 1948, the Court of Appeals disposed of the first question by sustaining the jurisdiction of the Municipal Court. However, the judgment was reversed upon the second issue, the Court of Appeals holding that the United States was subject to the restrictions imposed by the District of Columbia Emergency Rent Act on suits for recovery of possession of real property in the District of Columbia (R. 43-49). Accordingly, the judgment of the Municipal Court of Appeals was reversed and the cause was remanded to the latter court with instructions to enter orders in accordance with the opinion (R. 49).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the United States is a "landlord" within the meaning of the District of Columbia Emergency Rent Act, and hence cannot increase the rentals on defense housing owned by it and situated in the District of Columbia without complying with the standards and procedures prescribed by that Act.

2. In reversing the judgment of the Municipal Court of Appeals for the District of Columbia.

SUMMARY OF ARGUMENT

The language, history and policy of the statutory provisions relating to public housing projects owned and managed by the United States in the

District of Columbia show that Congress did not intend that the administration of such projects should be confined within the procedural and other limitations imposed by the District of Columbia Emergency Rent Act.

A. The National Capital Housing Authority administers two types of housing pursuant to various federal statutes. In the case of low-rent housing, the basic rental is ordinarily fixed on an economic or cost rent basis. In the case of tenants whose income is such that they cannot pay the economic rental, the difference is supplied by Government subsidy. All rentals are based upon the tenant's income. Any rental charge exceeding the economic or cost rent is designed merely to encourage the search for private housing, and therefore may approximate the rent for comparable private housing. The second type of housing—defense housing—was constructed under various statutes, some of which were passed subsequent to the enactment of the District of Columbia Emergency Rent Act, which vested authority as to rentals in the federal officials managing the property and limited occupancy to defense workers.

The Government is not, of course, operating such projects for a profit. The primary consideration in the administration of both types of housing is to provide adequate housing for needy families, and at rentals gauged to their capacity to pay.

B. The District of Columbia Emergency Rent Act does not mention the United States or its

housing properties, but merely defines the term "landlord" in general terms. Under familiar rules of construction, a provision drafted in such terms does not apply to the United States, unless there are affirmative reasons for believing that Congress so intended. Here, on the contary, all the available legislative materials affirmatively point the other way.

The avowed purpose of the Act is to prevent "profiteering and other speculative and manipulative practices by some owners of housing accommodations." The committee reports and the debates show clearly that private, not Government, housing was the concern of Congress in enacting the statute. The statute also provides criminal punishment for landlords violating the statute, and for suits against landlords for double the amount of unlawful rent increases together with attorneys' fees and costs. "These considerations, on their face, obviously do not apply to the Government as an employer [landlord]." *United States* v. *Mine Workers*, 330 U. S. 258, 274.

Moreover, the basic rental level fixed by the local Emergency Rent Act is the rental actually received for housing accommodations on January 1, 1941, which Congress regarded as a date upon which rentals were fairly arrived at by private bargaining in a competitive market. The rentals on Government housing, as has already been noted, are not so fixed. Federal rentals are determined pri-

marily by reference to the changes in economic status, family conditions, etc., of the tenants. The Rent Act cannot harmoniously be applied to this method of operation since it specifies entirely different criteria for determining when rental increases are justified—criteria which are relevant as to private but not to federal housing.

C. The Emergency Price Control Act of 1942, 56 Stat. 23, rather than supporting the view of the court below that the District of Columbia Emergency Rent Act was intended to apply to federal housing supports the opposite conclusion. That Act left control of rentals of the property here involved in the hands of the National Capital Housing Authority, subject only to control by the National Price Administrator. In the Housing and Rent Act of 1947, 61 Stat. 193, Congress removed Government housing from the control vested in the National Price Administrator, and expressly placed complete authority and control in the federal agency managing such housing.

ARGUMENT

Congress did not intend that the District of Columbia Emergency Rent Act should apply to defense housing owned by the United States

The property in suit is owned by the United States and was leased to respondent on a month-to-month basis. Unless the District of Columbia Emergency Rent Act is applicable, the United States had an unquestioned right to repossess the

property by the giving of the thirty-day notice to quit.

The Court of Appeals held that the restrictions imposed by the Emergency Rent Act (45 D. C. Code, sec. 1601, *et seq.*) are applicable in this case. Section 1605 of that Act (pp. 36-37, *infra*) provides that no action to recover possession may be maintained "so long as the tenant continues to pay the rent to which the landlord is entitled," unless certain procedure has been followed, which was not done here. The rental increase here involved was not submitted to the local Rent Administrator for his approval under the District of Columbia Emergency Rent Act.[3]

This case squarely presents the question, therefore, whether the National Capital Housing Authority, an agency of the United States, in its capacity of owner of defense housing situated within the District of Columbia, is a "landlord" within the meaning of the District of Columbia Emergency Rent Act, and hence is subject to all the provisions of that Act which Congress has made applicable to private landlords. The Government respectfully submits that the language, history, and policy of the relevant statutory provi-

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[3] There is nothing in the record to support a conclusion that this rent increase was in any respect arbitrary and unwarranted. Actually, the increase was necessitated by a change in the source of heating gas from the District of Columbia sewage disposal plant (which furnished the gas free) to the Washington Gas Light Company. See Annual Report of National Capital Housing Authority (1947) page 31.

sions show that Congress did not intend that rent controls with respect to defense housing owned by the United States within the District of Columbia should be administered by a local administrative official appointed by the Commissioners of the District of Columbia, under a statute prescribing standards which are manifestly inapplicable to Government-owned defense housing, the rentals for which are fixed on a basis entirely different from that ordinarily used by private landlords. The question of statutory construction in this case is not, as the Court of Appeals evidently believed, whether Congress intended that rentals fixed by the National Capital Housing Authority should be entirely free of any review by a higher authority. It is, rather, whether Congress intended that the Rent Administrator of the District of Columbia should be the reviewing authority, and that he should exercise such review within the framework of the standards and procedures contained in the District of Columbia Act—or whether, as we believe to be clear from the relevant legislative materials, Congress intended that the National Capital Housing Authority should, in its management and operation of defense housing, carry out the public housing policies established by Congress and the President, and that the validity of its actions is to be determined against the background of the provisions of law which govern its functions and from which its authority is derived.

A. *The functions of the National Capital Housing Authority.*—The National Capital Housing Authority[4] was created in 1934 pursuant to the Alley Dwelling Act of June 12, 1934, 48 Stat. 930,[5] for the purpose of eliminating alley dwellings in the District of Columbia. This program contemplated the destruction of sub-standard alley dwellings and, in some instances, the erection of improved dwellings which would be rented to the former tenants and others in similar economic circumstances. The National Capital Housing Authority is now administering 112 dwellings of this character "upon such terms and conditions as [it] may determine." All of these dwellings were rented on January 1, 1941, and there has been no attempt to increase the rent since that date. Tenancy, however, is restricted to persons of low income, and under the policies of the National Capital Housing Authority it may be necessary, when the size of a family increases or decreases, to effect a transfer to another dwelling of appropriate size.

The Alley Dwelling Act was amended by the Act of June 25, 1938, 52 Stat. 1186, 5 D. C. Code, secs. 103-116, by adding Title II to the Act. Title II authorized the National Capital Housing Authority to operate low-rent housing pursuant to

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[4] The organization was first known as the Alley Dwelling Authority. Its name was changed in 1943 to National Capital Housing Authority by Executive Order 9344, 8 Fed. Reg. p. 6805.

[5] For a history of the Authority see 11 Fed. Reg. 10111.

the United States Housing Act of September 1, 1937, 50 Stat. 888, as amended, 42 U.S.C. secs. 1401 to 1430, which authorizes the making of loans to local authorities for the purpose of providing low-rent housing accommodations. That Act provides (Sec. 2):

> The term "low-rent housing" means decent, safe, and sanitary dwellings within the financial reach of families of low income, and developed and administered to promote serviceability, efficiency, economy, and stability, and embraces all necessary appurtenances thereto. The dwellings in low-rent housing as defined in this Act shall be available solely for families whose net income at the time of admission does not exceed five times the rental (including the value or cost to them of heat, light, water, and cooking fuel) of the dwellings to be furnished such families, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one.

Under this Act the National Capital Housing Authority manages 3147 dwellings in the District of Columbia for families of low income.[6]

Many of the tenants who are eligible to occupy low-rent housing under the above provision are not able to pay a rent which would return to the Government the full cost of construction and opera-

[6] The functions of the United States Housing Authority had been transferred to the Federal Public Housing Authority by Executive Order 9070, 7 Fed. Reg. p. 1529, 50 U.S.C.A. War App. sec. 601 note, p. 206, and are now vested in the Public Housing Administration by Reorganization Plan No. 3 of 1947, 12 Fed. Reg. 4981, 61 Stat. 954, 5 U.S.C.A. sec. 133y-16.

tion even without any profit. Accordingly, in the operation of federal low-rent housing, those who can afford it pay an economic or cost-rent. However, a graded rent system was established under which tenants unable to pay the cost or economic rent pay a lesser amount based upon their income and the size of the families. The difference between the graded rent and the cost or economic rent is made up by a subsidy from the federal Government and by exemption from local real estate taxes. Under this graded rent system, as the financial situation of a tenant progresses his rent is increased accordingly. Moreover, the size of the dwelling to be occupied is determined according to the number of persons to be housed. Thus, the transfer of a tenant to a dwelling of another size may be required as the family increases or decreases in size. When a tenant's income exceeds the allowable maximum (which is now $3,000 per year) he is "graduated" to private housing as soon as it can be found at a rental which he can afford. To stimulate the search for private housing by these over-income tenants, rents for them "comparable" to what they might have to pay for similar accommodations in private housing are established and the rent scale is extended upward above the cost or economic rent level. The maximum which a tenant may be required to pay can never be higher than the "comparable rent," and is in most instances lower.[7]

[7] A description in detail of the basis for rentals and the method of administration of such housing is to be found in the

The basic difference between a rental fixed pursuant to a welfare program of furnishing decent living accommodations to families of low income and a rental fixed in a competitive market was recognized in *United States* v. *Hansen*, 143 F. 2d 7, 9 (C.A. 7) and *Northwood Apartments* v. *Brown*, 137 F. 2d 809, 815 (Em. Ct. App.). Congress itself has recognized the essential difference between public low-rent housing and private housing. The District of Columbia Redevelopment Act of 1945, 60 Stat. 790, provided in section 3(f) with regard to housing constructed under the Act:

> "Low-rent housing" means safe and sanitary housing within the financial reach of families of comparatively low income and, as a guide for the standard of rental to be used as a maximum at the time of the enactment of this law but not necessarily thereafter, it is specified that such housing shall be rented at not more than $13 per room per month, excluding utilities.

And by section 3(k) a formula was provided for fixing rentals, based upon ascertainment of a low-income group, and the application of that formula was entrusted to the Commissioners for the District of Columbia.

Annual Report of the National Capital Housing Authority for the year ending June 30, 1947, pp. 5-10. Congress had been similarly informed of management policy in the Annual Report of the Alley Dwelling Authority, now the National Capital Housing Authority, for the year ending June 30, 1941, pp. 6-9, Appendix, pp. 1-7.

In addition to the low-rent housing, there are 4,559 dwellings in the District of Columbia classed as "defense housing". The Bellevue Houses containing 601 units fall in this class. They were constructed under authority of section 201 of the Second Supplemental National Defense Appropriation Act, 1941, 54 Stat. 872, 883 (pp. 32-33, *infra*), which authorized the Secretary of the Navy to rent housing so constructed to defense workers with families, including military personnel, employed in naval establishments in that area. The Bellevue Houses were later transferred to the National Housing Agency[8] pursuant to Executive Order 9070.[9] The administration of Bellevue Houses was then delegated to the National Capital Housing Authority by lease agreement (R. 29-30). Other defense housing was constructed under authority contained in the Urgent Deficiency Appropriation Act, 1941, 55 Stat. 14, and the Lanham Act of October 14, 1940, 54 Stat. 1125, as amended, 42 U.S.C. secs. 1521, *et seq.*

Under these Acts, the National Capital Housing Authority developed a number of defense housing projects in the District of Columbia which it still administers. Other defense housing projects were developed by other agencies of the Government

[8] The functions of the National Housing Agency were transferred to the Housing and Home Finance Agency by Reorganization Plan No. 3 of 1947, 12 Fed. Reg. 4981, 61 Stat. 954, 5 U.S.C.A. sec. 133y-16.

[9] 7 Fed. Reg. p. 1529, 50 U.S.C.A. War App. sec. 601 note, p. 206.

and were later transferred to the National Capital Housing Authority for administration.

The most comprehensive of the statutes authorizing defense housing is the Lanham Act. Section 7 of the Act as originally enacted authorized the Federal Works Administration to rent "any property acquired or constructed under the provisions of this Act." The second proviso of that section reads as follows:

> *Provided further,* That the Administrator shall fix fair rentals, on projects developed pursuant to this Act, which shall be within the financial reach of persons engaged in national defense

Section 7 was subsequently renumbered to become section 304. Act of June 28, 1941, 55 Stat. 361, 363. Of course, this was before passage of the District of Columbia Emergency Rent Act. However, section 6 of the Act of January 21, 1942, 56 Stat. 11, 12, enacted shortly after the passage of the local Emergency Rent Act, amended the second proviso of renumbered section 304 to read as follows:

> *Provided further,* That the Administrator shall fix fair rentals, on projects developed pursuant to this Act, which shall be based on the value thereof as determined by him, with power during the emergency, in exceptional cases, to adjust the rent to the income of the persons to be housed, and that rentals to be charged for Army and Navy personnel shall be fixed by the War and Navy Departments.

The Bellevue Houses property here in question, while defense housing, was not constructed under the Lanham Act, but as already noted, was constructed pursuant to section 201 of the Second Supplemental National Defense Appropriation Act, 1941 (pp. 32-33, *infra*). However, by section 5 of the Act of June 28, 1941, 55 Stat. 361, 363, Congress specifically provided:

> The departments, agencies, or instrumentalities, administering property acquired or constructed under section 201 of the Second Supplemental National Defense Appropriation Act, 1941 [the statute under which the instant property was constructed], shall have the same powers and duties with respect to such property and with respect to the management, maintenance, operation, and administration thereof as are granted to the Federal Works Administrator with respect to property acquired or constructed under title I of such [Lanham] Act of October 14, 1940, and with respect to the management, maintenance, operation, and administration of such property so acquired or constructed under such title.

A provision almost identical with that just quoted and applying to housing constructed under the Urgent Deficiency Appropriation Act, 1941, is found in section 10 of the Act of January 21, 1942, 56 Stat. 11, 13. This clearly shows that Congress intended to vest in the agency managing the instant property the same powers over the housing here in

question as were vested in the Federal Works Administrator over Lanham Act property.

Thus, neither low-rent housing projects, nor defense housing projects, are operated for profit. In both instances, the primary considerations controlling the operation of these projects so as to serve the public interest in providing needed low-rent housing are the financial status of the tenants, and, in the case of defense projects, their employment in defense industry or the military services. In order to carry out the housing programs, adjustments in rentals, changes in premises occupied or eviction from the project are required from time to time as the status of each individual tenant changes either as to income, family size or employment.

B. *The language and history of the District of Columbia Emergency Rent Act.* The relevant provisions of the District of Columbia Emergency Rent Act are set forth in the appendix, *infra*, pp. 33-39. The term "landlord" is broadly defined in Section 11 of the Act to include "an owner, lessor, sublessor, or other person entitled to receive rent for the use or occupancy of any housing accommodations." "Person" is defined to include "one or more individuals, firms, partnerships, corporations, or associations and any agent, trustee, receiver, assignee, or other representative therof." [10]

[10] The Act defines "housing accommodations" to mean "any building, structure or part thereof, or land appurtenant thereto,

At the outset of our inquiry into the meaning and effect of these words, we are aided by a principle of construction settled by a long series of decisions of this Court, namely, that the United States is not included within the restrictions imposed by general statute unless it is specifically named. *Dollar Savings Bank* v. *United States*, 19 Wall. 227, 239; *United States* v. *Herron*, 20 Wall. 251, 263; *United States* v. *American Bell Telephone Co.*, 159 U. S. 548, 554; *United States* v. *Stevenson*, 215 U. S. 190, 197; *United States* v. *Mine Workers*, 330 U. S. 258, 270, 272; *United States* v. *Wyoming*, 331 U. S. 440, 449. In the *Mine Workers* case, 330 U. S. at 272-273 this Court said: "There is an old and well-known rule that statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect * * * [unless] there were extraneous and affirmative reasons for believing that the sovereign should also be deemed subject to a restrictive statute." And in the present case, we believe, there is clear and affirmative evidence that Congress did not intend to subject the United States, *qua* owner of defense housing, to the general restrictions imposed by the District of Columbia Emergency Rent Act.

The District of Columbia Emergency Rent Act became law on December 2, 1941, and so far as is

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or any other real or personal property rented or offered for rent for living or dwelling purposes in the District of Columbia * * *". 45 D. C. Code 1611 (a).

here material its provisions have not been altered since that time. Section 1 of the Act, 45 D. C. Code, sec. 1601, sets out the objectives. It recites that the national emergency and the national defense program have increased housing congestion in the District of Columbia and "have led or will lead to profiteering and other speculative and manipulative practices by some owners of housing accommodations," and that the purpose of the legislation is to prevent undue rent increases or other practices which tend to increase the cost of living or otherwise impede the national defense program.

The Court of Appeals stated (R. 46) that the law was not passed for the purposes of regulating the relationship between landlord and tenant, or "for a mere regulation of rents that they might be fair and reasonable. Its purpose was to prevent practices tending to increase the cost of living." But the "practices tending to increase the cost of living" which the Act was intended to prevent were unscrupulous profiteering and other speculative and manipulative practices by private owners who operated for profit. Thus, in reporting the bill which ultimately became the Emergency Rent Act, the House Committee on the District of Columbia stated (H. Rept. No. 1317, 77th Cong., 1st sess. p. 2): "The present demand for living quarters on the part of those whom the defense effort requires to live and work in Washington, has tempted some owners and managers of rental properties to

demand exorbitant rentals. * * * This bill is designed to protect * * * present and future tenants in the District of Columbia from the rent-gouging practices of a minority of the landlords." The same statement of purpose appears in the report of the Senate Committee on the District of Columbia (S. Rept. No. 827, 77th Cong., 1st sess., p. 3).

The debates on the bill contain further indications that it was aimed solely at private interests. In the House, Representative Randolph, in charge of the bill, observed that Washington real estate operators had stated that "there are groups that have come here from the outside exploiting those who are renting properties in the District of Columbia", and that "in some instances in Washington the local real estate interests have upped their rents unfairly, and in many instances there seem to be unjustifiable prices." (87 Cong. Rec., Pt. 8, p. 8448).

At another point in the House debate on the bill Chairman Randolph stated that tenants having a monthly income of $120 were paying 34 percent of that income for rent, whereupon the following colloquy ensued (*id.*, at p. 8449):

> Mr. Healey: Does the gentlemen personally know—and he has had a great deal to do with the District of Columbia—whether there are available for the thousands of persons in the $120 class housing at a price commensurate with the income they earn?

> Mr. Randolph: No; I do not think accommodations are adequate and we in the District Committee have been attempting through the low-cost housing here under the Alley Dwelling Authority to provide opportunities for the low-income group. That is being developed in certain sections here, but I am sure it is not nearly adequate to meet the need.

Thus, it was apparently the view of the Congressman in charge of the bill that if there had been sufficient federal housing in the District of Columbia, the low-income group of tenants would not have needed the protection afforded by the rent control legislation,

By the District of Columbia Emergency Rent Act, Congress clearly sought to make available privately owned housing accommodations at reasonable rentals. This was done to meet a situation where the demand for such accommodations so far exceeded the supply as to create a danger of avaricious activities on the part of some landlords. Congress recognized that regulation of private housing alone was not a complete solution to the problem of inadequate housing, and so it authorized construction of the property here involved and other defense and low-rent housing projects in the District of Columbia. Clearly, the two programs, the one to control rentals of private housing and the other to provide public housing at low-cost rentals, were independent means employed by the Government to attain a common end, and there is no basis

for implying an intention, never expressed by Congress, that the one program should restrict the other.

Moreover, the theory upon which the local Emergency Rent Act is constructed was to freeze rentals existing on January 1, 1941. This was on the assumption that rentals as of that date represented a fair rental as a result of bargaining by the parties in a competitive normal market. See 87 Cong. Rec. Pt. 8, pp. 8447, 8448, 8449, 8454. As the court below stated (R. 46), under the District of Columbia Emergency Rent Act "Deviations from its rigid fixations were permitted only upon proof of 'peculiar circumstances', substantial changes in taxes or other maintenance or operating costs, or substantial capital improvements." But, as has already been shown (*supra*, pp. 13-14), rentals established for federal housing were established on an entirely different basis. Freezing of rents on public low-rent housing at the levels such housing was rented for on January 1, 1941, is to apply the local Emergency Rent Act to a rent basis entirely different from that contemplated by Congress in enacting the statute.

The Rent Administrator of the District of Columbia, in determining whether increases should be permitted, must find justification in the landlord's increased costs or capital improvements, and the like. The Act would not permit increases of rental or change of premises as a result of an improve-

ment in the economic condition of a tenant or an increase in the size of his family. To apply the Emergency Rent Act to federal housing in the District would, therefore, require a complete revision in the method of administration of such development.[11]

Moreover, section 10 of the local Act (45 D. C. Code, section 1610, pp. 37-38, *infra*) provides civil and criminal penalties for landlords who violate the Act. On the civil side a landlord may be sued for double the amount of excess rent, plus attorneys' fees and costs. And on the criminal side punishment for violation of the Act is set at a maximum fine of $1,000.00 or imprisonment for not more than one year or both. "These considerations, on their face, obviously do not apply to the Government as an employer [landlord]." *United States* v. *Mine Workers*, 330 U. S. 258, 274. Yet, the decision of the Court of Appeals presumably subjects the United States to such penalties. The decision has already been so construed by the Municipal

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[11] We are advised that the Rent Administrator of the District of Columbia "has never contended the Rent Control Act of the District applied to the properties of the National Capital Housing Authority, as the rents have been fixed by the Authority on the basis of the ability of the tenant to pay rather than upon rents charged for comparable housing accommodations, which is the criterion fixed in the Rent Act for the determination of rentals by the Rent Administrator," and that if the decision below stands, "the Rent Administrator will be confronted with the almost impossible task, with his present force, of attempting to fix the rental on the approximately 8,000 rental units of the National Capital Housing Authority."

Court of the District of Columbia in *United States* v. *Kalstein*, No. L. & T. 242-947 (see Supplemental Memorandum of the United States on petition for certiorari).[12] It is fundamental that neither consent to sue the United States nor liability for costs can be founded upon anything less than clear and explicit statutory consent by Congress. *United States* v. *Shaw*, 309 U. S. 495, 503; *United States* v. *U. S. Fidelity Co.*, 309 U. S. 506, 513; *United States* v. *Chemical Foundation*, 272 U. S. 1, 20; *United States* v. *Worley*, 281 U. S. 339, 344.

C. *The relation of the District of Columbia Act to national rent control legislation.*—As has been noted, the District of Columbia Emergency Rent Act became law on December 2, 1941; and in section 6 of the Act of January 21, 1942 (*supra*, pp. 17-18), Congress had expressly placed control over rentals on federal defense housing in the hands of the federal agencies and officials responsible for the management of such properties.

Congress was at that time, and had been for some time previously, working on a national price control act, including regulation of rentals for housing accommodations. The result was the Emergency Price Control Act of January 30, 1942,

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[12] When the same Congress which enacted the local rent act two months later submitted the United States and its housing to possible rent control by the National Price Administration under the Emergency Price Control Act of 1942, it did so specifically, and expressly exempted the United States and its agencies from the punitive provisions of that Act. (See p. 9, *infra*).

56 Stat. 23 (pp. 39-42, *infra*). It would be surprising if in this Act, passed only nine days after the statute of January 21, 1942, Congress had departed from its policy of vesting control of rentals of federal housing in other than federal officials. But it clearly did not do so; and the Emergency Price Control Act of 1942, rather than justifying the court below in reading into the earlier local Act an intent to submit the United States and its housing to control by the local Rent Administrator, proves just the opposite.

Section 1(c) of that Act provided that its provisions "shall be applicable to the United States, its Territories and possessions, and the District of Columbia." Section 2(b) authorized the National Price Administrator to order a rent reduction for any "defense-rental area" housing accommodations. A sixty-day period was allowed for such reduction to be made effective by State or local regulation, or otherwise. This operated to stay the hand of the National Administrator to give opportunity for the reduction to be effected voluntarily by the owner, or, failing that, by state or local regulation in cases where such regulatory bodies had jurisdiction. "Defense-rental area" was defined in section 302(d) to include "the District of Columbia and any area designated by the Administrator as an area where defense activities have resulted or threaten to result in an increase in the rents for

housing accommodations inconsistent with the purposes of this Act." Section 302 (h) defined the word "person" as including "the United States or any agency thereof," with a proviso that "no punishment provided by this Act shall apply to the United States, or to any such * * * agency."

These provisions make it clear that when the Congress which enacted the local Emergency Rent Act later decided to submit the United States and its property to a restrictive statute, it did so specifically by express words. It is also clear that when, for the first time, Congress entrusted rental controls on federal housing to an authority other than the management officials, in the District as elsewhere, it conferred such authority on the National Price Administrator. And by regulation the National Price Administrator provided that rentals for housing outside the District of Columbia "constructed by the United States or any ageney thereof," should be the rental generally prevailing in the defense-rental area for comparable housing accommodations on the maximum rent rate, "as determined by the owner." (Rent Regulation for Housing, October 31, 1945, Section 4 (g), 10 Fed. Reg. 13528, 13530). Section 6(c)(2) of the same regulation (10 Fed. Reg. at 13534) provided that the rentals for housing outside the District of Columbia rented to Army or Navy personnel, including civilian employees of the War and Navy Departments should be the rents fixed by those

Departments. The Price Administrator apparently did not deem it necessary to exercise his control over such housing within the District of Columbia. And if he had done so, there is of course no reason to suppose that he would have dealt with the matter in any different way. It is reasonable to suppose that he would have fixed the rent levels at those set by the federal agencies actually administering federal housing property. Be that as it may, however, the decision of the Court of Appeals leads to the anomalous result that everywhere in the United States, except for the District of Columbia, the rents on federal housing, both low-cost and defense housing, are set by the officials or agencies managing the properties, but in the District alone these officers and agencies would be subordinated and subjected to control by a municipal official.

Prior to the amendment in 1947 of the Emergency Price Control Act of 1942, therefore, there could be no doubt that the authority of the National Price Administrator was paramount and exclusive with respect to Government-owned defense housing within the District of Columbia, and that the District of Columbia Emergency Rent Act could not be construed to give the District Administrator such authority. In 1947, when Congress modified federal rent controls, the Emergency Price Control Act was amended in several material respects. Section 202(a) of the Housing and Rent

Act of 1947, 61 Stat. 193, 50 U.S.C. App., Supp. I, 1881, does not include the United States or any of its political subdivisions in its definition of "person". The latter term was defined to include only "an individual, corporation, partnership, association, or any other organized group of persons, or a legal successor or representative of any of the foregoing." In thus terminating rental control over federal housing by the National Price Administrator, Congress made clear its intention to revest exclusive authority in the federal agencies and officials administering federal defense housing and other federal housing in the District of Columbia. It did so by providing in section 209(b) of the same act that "Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered."

The clear implication of the 1947 amendments to the national Act is that Congress intended to remove the limited rent control previously applicable to the United States under that Act and thereafter to vest management and control in the federal agencies administering federal housing properties.

CONCLUSION

For the foregoing reasons, it is submitted that the judgment of the Court of Appeals be reversed and that the cause be remanded to that court with directions to affirm the judgment of the Municipal Court of Appeals for the District of Columbia.

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APRIL 1949.

APPENDIX

I

Section 201 of the Second Supplemental National Defense Appropriation Act, 1941, approved September 9, 1940, 54 Stat. 872, 883, reads as follows:

> SEC. 201. To the President for allocation to the War Department and the Navy Department for the acquisition of necessary land and the construction of housing units, including necessary utilities, roads, walks, and accessories, at locations on or near Military or Naval Establishments, now in existence or to be built, or near privately owned industrial plants engaged in military or naval activities, which for the purposes of this Act shall be construed to include activities of the Maritime Commission, where the Secretary of War, the Secretary of the Navy, or the Chairman of the Maritime Commission shall certify that such housing is important for purposes under their respective jurisdiction and necessary to the national defense program, $100,000,000; *Provided*, That the average unit cost of such housing projects, including acquisitions of land and the installation of necessary utilities, roads, walks, accessories and collateral expenses shall not be in excess of $3,500: *Provided further*, That in carrying out the purposes of this section the Secretary of War and the Secretary of the Navy may utilize such other agencies of the United States as they may determine upon: *Provided further*, That

the Secretary of War and the Secretary of the Navy, at their discretion, are hereby authorized to rent such housing units, upon completion, to enlisted men of the Army, Navy, Marine Corps with families, to field employees of the Military and Naval Establishments with families, and to workers with families who are engaged, or to be engaged, in industries essential to the military and naval national defense programs, including work on ships under the control of the Maritime Commission. * * *

II

Sections 2, 3, 4, 5, 10, and 11 of the District of Columbia Emergency Rent Act of December 2, 1941, 55 Stat. 788, 45 D. C. Code, sections 1602, 1603, 1604, 1605, 1610, and 1611, so far as here material, read as follows:

Section 2 (45 D. C. Code 1602). Maximum rent ceilings and minimum service standards.

(1) On and after the thirtieth day following the enactment of this chapter, subject to such adjustments as may be made pursuant to sections 45-1603 and 45-1604, maximum-rent ceilings and minimum-service standards for housing accommodations excluding hotels, in the District of Columbia shall be the following:

(a) For housing accommodations rented on January 1, 1941, the rent and service to which the landlord and tenant were entitled on that date.

(b) For housing accommodations not rented on January 1, 1941, but which had been rented

within the year ending on that date, the rent and service to which the landlord and tenant were last entitled within such year.

(e) For housing accommodations not rented on January 1, 1941; nor within the year ending on that date, the rent and service generally prevailing for comparable housing accommodations as determined by the Administrator.

Section 3 (45 D. C. Code 1603). General adjustment of maximum rent ceilings.

Whenever in the judgment of the Administrator a general increase or decrease since January 1, 1941, in taxes or other maintenance or operating costs or expenses has occurred or is about to occur in such manner and amount as substantially to affect the maintenance and operation of housing accommodations generally or of any particular class of housing accommodations, he may by regulation or order increase or decrease the maximum-rent ceiling or minimum-service standard, or both, for such accommodations or class thereof in such manner or amount as will in his judgment compensate, in whole or in part, for such general increase or decrease. Thereupon such adjusted ceiling or standard shall be the maximum-rent ceiling or minimum-service standard for the housing accommodations subject thereto.

Section 4 (45 D. C. Code 1604). Petition for adjustment.

(a) Any landlord or tenant may petition the Administrator to adjust the maximum-rent ceiling applicable to his housing accommodations on the ground that such maximum-rent ceiling is, due to peculiar circumstances affecting such housing accommodations, substantially higher or lower than the rent generally prevailing for comparable housing accommodations; whereupon the Administrator may by order adjust such maximum-rent ceiling to provide the rent generally prevailing for comparable housing accommodations as determined by the Administrator.

(b) Any landlord may petition the Administrator to adjust the maximum-rent ceiling or minimum-service standard, or both, applicable to his housing accommodations to compensate for (1) a substantial rise, since January 1, 1941, in taxes or other maintenance or operating costs or expenses, or (2) a substantial capital improvement or alteration made since January 1, 1941; whereupon the Administrator may by order adjust such maximum-rent ceiling or minimum-service standard in such manner or amount as he deems proper to compensate therefor, in whole or in part, if he finds such adjustment necessary or appropriate to carry out the purposes of this chapter: *Provided*, That no such adjusted maximum-rent ceiling or minimum-service standard shall permit the receipt of rent in excess of the rent generally prevailing for comparable housing accommodations as determined by the Administrator.

Section 5 (45 D. C. Code 1605). Prohibitions.

(a) It shall be unlawful, regardless of any agreement, lease, or other obligation heretofore or hereafter entered into, for any person to demand or receive any rent in excess of the maximum-rent ceiling, or refuse to supply any service required by the minimum-service standard, or otherwise to do or omit to do any act in violation of any provision of this chapter or of any regulation, order, or other requirement thereunder, or to offer or agree to do any of the foregoing. Nothing herein shall be construed to require the refund of any rent paid or payable for the use or occupancy of housing accommodations prior to the 30th day following the enactment of this chapter.

(b) No action or proceeding to recover possession of housing accommodations shall be maintainable by any landlord against any tenant, notwithstanding that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled, unless—

(1) The tenant is (a) violating an obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or any regulation or order thereunder applicable to the housing accommodations involved or an obligation to surrender possession of such accommodations) or (b) is committing a nuisance or using the housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes, or

(2) The landlord seeks in good faith to recover possession of the property for his immediate and personal use and occupancy as a dwelling, or

(3) The landlord has in good faith contracted in writing to sell the property for immediate and personal use and occupancy as a dwelling by the purchaser and that the contract of sale contains a representation by the purchaser that the property is being purchased by him for such immediate and personal use and occupancy, or

(4) The landlord seeks in good faith to recover possession for the immediate purpose of substantially altering, remodeling, or demolishing the property and replacing it with new construction, the plans for which altered, remodeled, or new construction having been filed with and approved by the Commissioners of the District of Columbia.

Section 10 (45 D. C. Code 1610). Enforcement—Penalties.

(a) If any landlord receives rent or refuses to render services in violation of any provision of this chapter, or of any regulation or order thereunder prescribing a rent ceiling or service standard, the tenant paying such rent or entitled to such service, or the Administrator on behalf of such tenant, may bring suit to rescind the lease or rental agreement, or, in case of violation of a maximum-rent ceiling, an action for double the amount by which the rent paid exceeded the applicable rent ceiling

and, in case of violation of a minimum-service standard, an action for double the value of the services refused in violation of the applicable minimum-service standard or for $50, whichever is greater in either case, plus reasonable attorneys' fees and costs as determined by the court. Any suit or action under this subsection may be brought in the municipal court of the District of Columbia regardless of the amount involved, and the municipal court is hereby given exclusive jurisdiction to hear and determine all such cases.

(b) Any person who willfully violates any provision of this chapter or any regulation, order, or requirement thereunder, and any person who willfully makes any statement or entry false in any material respect in any document or report required to be kept or filed thereunder, and any person who willfully participates in any fictitious sale or other device or arrangement with intent to evade this chapter or any regulation, order, or requirement thereunder, shall be prosecuted therefor by the corporation counsel of the District of Columbia or an assistant, on information filed in the police court of the District of Columbia, and shall upon conviction be fined not more than $1,000 or imprisoned for not more than one year, or both.

Section 11 (45 D. C. Code 1611). Definitions. As used in this chapter—

(a) The term "housing accommodations" means any building, structure or part thereof,

or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes in the District of Columbia (including, but without limitation, houses, apartments, hotels, rooming- or boarding-house accommodations, and other properties used for living or dwelling purposes) together with all services supplied in connection with the use or occupancy of such property.

* * * * *

(g) The term "landlord" includes an owner, lessor, sublessor, or other person entitled to receive rent for the use or occupancy of any housing accommodations.

(h) The term "person" includes one or more individuals, firms, partnerships, corporations, or associations and any agent, trustee, receiver, assignee, or other representative thereof.

III

The Emergency Price Control Act of January 30, 1942, 56 Stat. 23, provided:

Section 1 (c):

The provisions of this Act shall be applicable to the United States, its Territories and possessions, and the District of Columbia.

* * * * *

Section 2 (b):

Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act,

he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give due consideration to the rents prevailing for such accommodations, or comparable accommodations, on or about April 1, 1941 (or if, prior or subsequent to April 1, 1941, defense activities shall have resulted or threatened to result in increases in rents for housing accommodations in such area inconsistent with the purposes of this Act, then on or about a date (not earlier than April 1, 1940), which in the judgment of the Administrator, does not reflect such increases), and he shall make adjustments for such relevant factors as he may determine and deem to be of general applicability in respect of such accommodations, including in-

creases or decreases in property taxes and other costs within such defense-rental area. In designating defense-rental areas, in prescribing regulations and orders establishing maximum rents for such accommodations, and in selecting persons to administer such regulations and orders, the Administrator shall, to such extent as he determines to be practicable, consider any recommendations which may be made by State and local officials concerned with housing or rental conditions in any defense-rental area.

* * * * *

Sec. 302. As used in the Act—

* * * * *

(d) The term "defense-rental area" means the District of Columbia and any area designated by the Administrator as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of this Act.

* * * * *

(h) The term "person" includes individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing: *Provided*, That no

punishment provided by this Act shall apply to the United States, or to any such government, political subdivision, or agency.

IV

The material portion of the Housing and Rent Act of 1947 approved June 30, 1947, 61 Stat. 193, provides:

Section 202 (a):

The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or a legal successor or representative of any of the foregoing.

* * * * *

Section 209 (b):

Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided,* That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account or service-connected disability or disabilities, exceeds the allowable maximum.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

473

No. 473.

UNITED STATES OF AMERICA, *Petitioner,*

v.

REGINALD P. WITTEK.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

BRIEF FOR REGINALD P. WITTEK.

WARD B. MCCARTHY,
Attorney for Reginald P. Wittek.

April, 1949.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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BRIEF FOR REGINALD P. WITTEK.

QUESTION PRESENTED.

Did the Landlord and Tenant Branch of the Municipal Court for the District of Columbia have jurisdiction to maintain this action and grant judgment for possession of these housing accommodations?

SUMMARY OF ARGUMENT.

Congress, under the Constitution, has exclusive powers to legislate for the District of Columbia. When exercising such powers, the Congress possesses not only every appropriate national power, but in addition, all the powers of legislation which may be exercised by a state in dealing with its affairs so long as no other provisions of the Constitution are infringed. Exercising those powers, the Congress enacted the District of Columbia Emergency Rent Act for the express purpose of preventing an increase in the cost of living and thus impeding the National Defense Program by providing for rent control of all housing accommodations, privately or federally owned, in the District of Columbia.

A. Congress, under its Constitutional powers, exercises exclusive legislative control over the District of Columbia, establishes its courts and determines their jurisdiction.

B. Wittek, employed in the National Defense program, was required to live and work in the District of Columbia, and was one of the class of persons especially intended to be protected in their tenancy by the District of Columbia Emergency Rent Act.

C. The rent control features of the Emergency Price Control Act were never applicable to the District of Columbia.

ARGUMENT.

A. Congress, Under Its Constitutional Powers, Exercises Exclusive Legislative Control Over the District of Columbia, and Establishes Its Courts and Determines Their Jurisdiction.

Under the Constitution, the Congress has the exclusive power to legislate for the District of Columbia, and when exercising such powers, it possesses not only every appropriate national power, but, in addition, all the powers of

legislation which may be exercised by a state in dealing with its affairs so long as no other provisions of the Constitution are infringed.

Atlantic Cleaners & Dyers v. *U. S.*, 286 U. S. 427, 52 S. Ct. 607, 76 L. Ed. 1197 (1932)

Congress by the Organic Act of the District of Columbia of 1801 established two courts and thereafter by various Acts changed their names and jurisdictions as they exist today.

Since the Act of July 4, 1864, a jurisdictional provision has been in the Code of Laws for the District of Columbia providing that a tenancy from month to month, as here, may only be terminated on the part of the landlord by his giving the tenant 30 days' notice in writing to quit (R. p. 17, Pl's Exh. 3) and thereafter upon failure of the tenant to surrender possession, for summary proceedings by the landlord in the now Municipal Court for the District of Columbia. (R. pp. 1, 8.)

But as this Court said in *Willis* v. *Eastern T. & B. Co.*, 169 U. S. 295, 18 S. Ct. 347, 42 L. Ed. 752 (1897), those provisions were only applicable where the conventional relationship of landlord and tenant existed.

The District of Columbia Emergency Rent Act of December 2, 1941, placed a further jurisdictional limitation on the Municipal Court by providing that "no action or proceeding to recover possession of any housing accommodations shall be maintained by any landlord against any tenant * * * unless" certain grounds were alleged. (D. C. Code 1940, 45-1605 (b-1)) It is conceded here no such grounds were alleged. (Br. p. 10)

Prior to the Rent Act, the term "landlord" had not been defined by the Congress and therefore its common law definition had been accepted. *Willis* v. *Eastern T. & B. Co.*, supra.

The Rent Act, however, provided, "The term 'landlord' includes an owner, lessor, sublessor, or other person en-

titled to receive rent for the use or occupancy of any housing accommodations" and the term "person" "includes one or more individuals, firms, partnerships, corporations, or associations and any agent, trustee, receiver, assignee, or other representative thereof." (D. C. Code 1940, 45-1611 (g) and (h))

The opinion of the Appellate Court was rendered September 27, 1948 and the present Congress, which is presumed to know the statutory interpretation therein placed upon the term "landlord," extended the Rent Control Act *in toto* until April 30, 1949 (H. R. 3910). It is further significant to note that while certain proposals were made by Committees of both Houses of Congress (H. R. 1757) to change certain provisions of the local Rent Act to make it conform to the National Rent Act of March , 1949, no express provision was proposed, either to or by those Committees, by the use of express language, to exclude the United States from the present definition of the term "landlord." Thus it would appear that the Congress has approved of the inclusion of the United States within the statutory definition of "landlord."

In brief, it is contended the principle of statutory construction that the United States is not included within the restrictions imposed by a general statute unless it is specifically named, citing cases, eliminates it from the District of Columbia Rent Act (Br. p. 20). It should be noted that the statutes referred to in the cited cases, were enacted by Congress under its national powers (income tax, bankruptcy, patent, criminal law, immigration, federal injunctions in labor disputes, and public lands) whereas the local Rent Act was enacted under its powers to legislate for the District of Columbia.

If the construction contended for be applicable to the local Rent Act, it is, however, as the Appellate Court pointed out (R. p. 48) subject to further rule of construction where, as here, the context and purposes of an Act of

Congress require, the statutory term "person" defined to include a "corporation", includes the United States.

Ohio v. *Helvering*, 292 U. S. 360, 54 S. Ct. 725, 78 L.Ed. 1307 (1934)
U. S. v. *Cooper Corp.*, 312 U. S. 600, 61 S.Ct. 742, 85 L.Ed. 1071 (1941)
Georgia v. *Evans*, 316 U. S. 159, 161, 62 S.Ct. 972, 86 L.Ed. 1346 (1942)

The purposes of the local Rent Act are fully spelled out by the Congress:

> "It is hereby found that the national emergency and the national defense program (1) have aggravated the congested situation with regard to housing accommodations existing at the seat of government; (2) have led or will lead to profiteering and other speculative and manipulative practices by some owners of housing accommodations; (3) have rendered or will render ineffective the normal operations of a free market in housing accommodations; and (4) are making it increasingly difficult for persons whose duties or obligations require them to live or work in the District of Columbia to obtain such accommodations. *Whereupon it is the purpose of this chapter, and the policy of the Congress during the existing emergency to prevent undue rent increases and any other practices relating to housing accommodations in the District of Columbia which may tend to increase the cost of living or otherwise impede the national-defense program.* (Italics ours.) (D. C. Code 1940—45-1601(a))

The Rent Act made no distinction between "landlords" and clearly says that it applies to "any landlord", with the avowed purpose of preventing practices which would "tend to increase cost of living or otherwise impede the National defense program."

The Government's contention that "the 'practices tending to increase the cost of living' which the Act was intended to prevent were unscrupulous profiteering and other speculative and manipulative practices by *private owners*

who operated for profit," and, therefore, the Congress did not intend that federal housing should be covered by the local Rent Act, because the government would not engage in undue rent increases and other practices relating to housing accommodations in the District of Columbia which may tend to increase the cost of living or otherwise impede the national-defense program, may not be sustained. (Br. p. 21, Italics ours)

The purposes of the Rent Act are set out, supra, p. 5, and the Appellate Court disposed of the above contention by saying:

> "* * * Raising the rents of governmental housing is just as much an increase in the cost of living as raising the rents in any other housing project. This is a matter of public interest and not a matter of landlords' rights, sovereign or otherwise. * * *
>
> "* * * The United States makes this argument:
>
> "'A mere reading of the above (the statutory declaration of purposes) shows that Congress did not have the United States in mind in enacting the Emergency Rent Act, since it could not have had in contemplation that the United States was an owner who would engage in "profiteering and other speculative and manipulative practices." (R. p. 48)
>
> "Of course, Congress did not 'have in mind' any particular landlord. What interests us in the argument is that this landlord, attempting to raise its rents by 12½ per cent, says that the statute does not prevent it from doing so, since Congress could not have thought that it would attempt to do so. The potential ramifications of such a rule of statutory construction are fascinating to contemplate. And, obviously, the true premise to the Government's conclusion must be the opposite of that which it states in that argument, i.e., the premise must be that Congress must have had in mind that the Government would raise its rents and intended that it should be permitted to do so.
>
> "We are presented with the argument that since this housing project was itself a defense project, intended for defense workers, any restriction upon control of

its rents would impede the national defense program and thus violate one of the stated purposes of the Rent Act. The answer is, as we have already said, that the Rent Act does not purport to regulate the relationship of landlord and tenant, but merely fixes the rent ceiling, and in that fixation the protection of defense workers was a primary concern. * * * (R. p. 47)

"We cannot refrain from commenting upon the curious spectacle of one agency of the Government, the National Capital Housing Authority, asserting a right to violate a principle so insistently and emphatically proclaimed by the rest of the Government as essential to the public welfare. This Authority acts by and on behalf of its principal, the United States, and so must be treated as though it were in fact the whole of the executive branch of Government. But strong evidence would have to be presented to convince us that it was within the intent of Congress that while no other landlord could imperil the economic status of tenants in the District of Columbia, nevertheless the United States, in its capacity as landlord of defense housing, could raise its rents by the unimpeded administrative determination of this lessee Authority." (R. p. 48)

By instituting a summary proceeding as authorized by the D. C. Code, i.e., filing a complaint for possession of Real Estate (R. pp. 1, 8) the United States recognized, sought and submitted to the limited jurisdiction of the Landlord and Tenant Branch of the Municipal Court for the District of Columbia.

The Court's limited jurisdiction to entertain summary actions for possession of real estate by "landlords" is fixed by statutes which neither create nor distinguish between "landlords". No "landlord" coming into that Court can enlarge that limited jurisdiction beyond its statutory boundaries.

When it authorized defense housing, that is, housing that could not be supplied by private capital when needed, the Congress recognized the well-established principle that when the government enters the field of private business, it

abandons its sovereignty and is to be treated as any person or corporation. This is evidenced by its directive that suits for the recovery of possession of defense housing should be in state courts by the Federal Administrator in accordance with state laws. (U. S. C. A. Title 42-1544). The mere fact that an agency is an instrumentality of the government does not defeat the doctrine of separate entities, by providing the manner in which suits for the recovery of possession of such housing should be made.

Bank of U. S. v. *Planters Bank of Ga.*, 9 Wheat 904, 6 L.Ed. 244
South Carolina v. *U. S.*, 199 U. S. 437, 50 L.Ed. 261
U. S. v. *Strang*, 254 U. S. 491, 55 L.Ed. 368
Gill v. *Reese*, 134 N. E. (2) 273, 53 Ohio App. 134
Central Market v. *King*, 272 N. W. 244, cert. denied 302 U. S. 687
Bowles v. *Washington Co.*, 58 F. Supp. 709 (D. C. Pa. 1945)

The Congress, exercising its national power, as well as that of a state legislature, and presumed to be familiar with the rules of statutory construction, by the use of broad and comprehensive language, clearly intended to bring within the provisions of the District of Columbia Emergency Rent Act, all housing accommodations either privately or federally owned, and thus prevent an increase in the cost of living or otherwise impeding national defense.

It is respectfully submitted that the holding of the Appellate Court that the provisions of the Rent Act apply to the United States as a landlord so as to bar this action is correct. (R. p. 45.)

B. Wittek, Employed in the National Defense Program, Was Required to Live and Work in the District of Columbia, and Was One of the Class of Persons Especially Intended to Be Protected in Their Tenancy by the District of Columbia Emergency Rent Act.

Wittek personally, is not a figure of national stature. He is however, a patriotic citizen of the United States who left his home in Connecticut with his family at the instance of his government, in the summer of 1941 and came to the District of Columbia to aid in his humble way, the National Defense Program, by accepting employment as a machinist or mechanic at the Navy Yard, where he is employed today. As such employee, the Navy in September 1941 rented him a "defense housing unit" in Bellevue Housing Project, and thereinafter in 1943 permitted him to move into a larger unit in the same project. This last unit is the premises here in litigation. Defense Housing Projects were authorized by Congress to house Navy employees, such as Wittek. (USCA tit. 42-1501 et seq.)

Further clarification is necessary of the statements in Brief p. 10, footnote 3 which says:

> "There is nothing in the record to support a conclusion that this rent increase was in any respect arbitrary and unwarranted. 'Actually, the increase was necessitated by a change in the source of heating gas from the District of Columbia sewage disposal plant (which furnished the gas free) to the Washington Gas Light Company. See Annual Report of National Capital Housing Authority (1947) page 31."

In about September 1941, under the same act, the Navy completed construction of identical housing projects, Bellevue and Chinquipin Village, Alexandria, Virginia and promptly rented them to naval personnel. Bellevue was to be heated by sludge gas from the District of Columbia sewage disposal plant and Chinquipin was to be heated by commercial gas. For a unit in Bellevue, such as Wittek's present quarters the rental was $4.80 cheaper per month

than an identical unit in Chinquipin, and all other units were in the same proportion. Since the occupants of both projects were Navy employees, the tenants of Chinquipin protested the differential, and the tenants of Bellevue in September of 1941 consented to a raise in their rentals per unit to equal comparable rents at Chinquipin.

The rent of Wittek's unit having been adjusted upward in 1941, as though it were to be heated by commercial gas, may it now be argued in good conscience, that because the heating source was changed in 1945, such an increase "by administrative determination of the National Capital Housing Administration" was not arbitrary and unwarranted. Furthermore sufficient sludge gas has been available at all times to heat Bellevue, the report of National Capital Housing Administration referred to, to the contrary.

It well may be that the foregoing might be one of the most convincing arguments why proposed rent increases by National Capital Housing Administration should be submitted to the District of Columbia Rent Administration, where both sides might be heard, and impartial judgment rendered, instead of arbitrary "administrative determination", as is here contended for.

The purposes of the local Rent Act and the persons intended to be protected are set forth herein at p. 5 supra.

C. The Rent Control Features of the Emergency Price Control Act Were Never Applicable in the District of Columbia.

The District of Columbia Emergency Rent Act of December 2, 1941, effective 30 days thereafter, established as maximum rent ceilings, for housing accommodations rented on January 1, 1941 the rent as of that date or if not rented on that date but rented during that year, the last rent to which the landlord was entitled.

It was a model law. It provided in exact detail for maximum service standards, general adjustment of maximum rent ceilings, petitions for adjustments by either landlord or tenant and prohibitions.

It provided for an Administrator, his duties, proceeding before him and for judicial review of his orders. Last, but not least, it spelled out exact definitions.

The District of Columbia Rent Administrator's continued authority over rental housing during the entire period of the war and up to the present time, while all other "defense rental areas" in the United States were controlled by other federal agencies, notably OPA and the Housing Expediter, is as simple of explanation as it is an established fact.

The D. C. Emergency Rent Act already was in effect when OPA was assigned rent control by The Congress in 1942. OPA's authority over particular areas (including the District of Columbia) *was conditioned upon failure of that area government to establish appropriate control.* Because the local Rent Act was a model law, many of whose provisions were copied and embraced in OPA regulations, and because its administration was effective and its coverage was fully as extensive as OPA's within its limited area, *OPA neither acquired nor attempted to acquire jurisdiction through the processes set forth in* Section 2(b) of the E. P. C. Act. (Br., App. pp. 39-41.)

The District of Columbia Emergency Rent Act has been extended, from time to time, and the Congress has, so far, never seen fit to change or amend the essentials of original act. On the contrary, the National Rent Act has been amended and changed many times in its most essential features. This would indicate that Congress has always been satisfied with the results accomplished by the local act and dissatisfied with those of the National Act or that changes of conditions outside of the District of Columbia justified modifications not called for in the District of Columbia.

The debates in Congress on H. R. 1757, 81st Congress, an Act to amend and extend the provision of the District of Columbia Emergency Rent Act of 1941, clearly indicates that rent control for the District of Columbia had never been included within the National Rent Control Act.

On March 21, 1949, speaking on the above-mentioned legislation, Representative Harris said:

> "* * * Since we have come along during the war and after the war with a separate procedure and with separate administration it seemed to those who are most familiar with the situation that it would not be advisable at this time to start all over in the District of Columbia by bringing the District within the national law. That is the reason you have separate administration and a separate law under which this act is administered." (81st Cong., Cong. Rec., V. 95, No. 45, p. 2924)

Representatives McMillan and Bates, who participated in the drafting of the original District Rent Control Act, emphasized that throughout the years efforts have been made to make the District Rent Control a part of the national overall rent control program but the Congress has never seen fit so to do. (81st Cong., Cong. Rec., V. 95, No. 45, pp. 2924-2927).

During the debates in the Senate upon the above bill on March 29, 1949, the differences between the local and national rent acts were noted by the Senators. (81st Cong. Rec. V. 95, No. 51, pp. 3431-3452, 3454, 3455.)

Senator McGrath in great detail pointed out these differences and the operations of the local rent act and said in part:

> "* * * but at least it is our hope that we shall not have to deal with this problem (National and D. C. Rent Control) again in the Congress; and, since we have that hope, I should think Senators would be willing to go along with a tried and true rent-control bill such as has been in effect in the District for the past 7 years.
>
> Whatever reasons and excuses may be thought up now for making a uniform act, whatever their validity may have been in years gone by, I think there is no valid reason, now that we are reaching the end of the program, completely to disrupt the administration, to change the practices and the procedures and the understandings of the people of the District as to how rent

> control in the District operates. I think that would be a great mistake. I therefore, appeal to Members of the Senate to pass the bill now before us, with the amendments which will be proposed. * * * " (81st Cong., Cong. Rec., V. 95, No. 51, p. 3448.)

Those statements alone should completely refute argument that the Congress never intended federal housing in the District of Columbia to be within the provisions of the local rent act by pointing out the differences between the local and national rent acts, and the various changes of purposes in the later act. (Br. pp. 26-30)

Those differences only illustrate the fact that the Congress, exercising its national and local powers, may legislate in one manner for the District of Columbia, and under its national powers alone, legislate in a totally different manner upon the same subject outside of the District of Columbia.

CONCLUSION.

For the foregoing reasons, it is most respectfully submitted that the Judgment of the Court of Appeals be affirmed.

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